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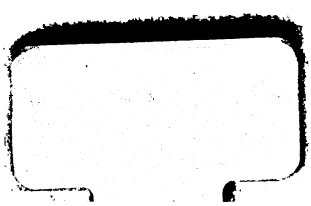

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TRIBAL LAW IN THE PUNJAB.

(Roe)
* 01

Sir William Markby [illegible]
with the authors compliments

Jany 26th 1899 –

TRIBAL LAW IN THE PUNJAB,

SO FAR AS IT RELATES TO RIGHT IN ANCESTRAL LAND:

BY

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DEDICATION.

TO

Sir HENRY MEREDYTH PLOWDEN, Kt.,

LATE SENIOR JUDGE OF THE

CHIEF COURT OF THE PUNJAB,

TO WHOSE ABLE AND EXHAUSTIVE JUDGMENTS

THE PUNJAB

IS SO GREATLY INDEBTED FOR

A CLEAR EXPOSITION

OF THE

TRUE PRINCIPLES OF ITS TRIBAL LAW,

THIS WORK IS DEDICATED

BY

THE AUTHORS.

PREFACE.

THE present work originated in a proposal, which has been under consideration for more than a year, to publish all judgments of the Chief Court on questions of custom relating to land which have been as yet unreported. At last it was decided that this should be done by Mr. H. A. B. Rattigan, Editor of the *Punjab Record*, and the materials collected under the supervision of the Judges were placed at his disposal. They will shortly be published in the form of a companion volume to the *Punjab Record*. We have, however, thought it better not to delay the present work until we could incorporate in it these fresh cases; the materials already at our disposal are quite sufficient to enable us to deduce general principles from the decisions; the publication of fresh judgments is a work which will naturally continue indefinitely; and all that can ever be done is to form a digest up to a certain date, and to duly note all fresh cases as they appear.

It was also felt that it would render the intended volume more useful if it were accompanied by a note explaining the general course of "case law" on the main points of the law of property in land, and pointing out the general principles to be deduced from it. Then it was further thought that an explanation and review of the *Riwáj-i-áms* or Records of Custom, which have formed so much of the base of the "case law," would also be useful. It at once became apparent that the judgments themselves and the suggested note could not be combined in a single volume. It was therefore decided that the judgments should be brought out alone by Mr. Rattigan as originally intended, and that he and I should join together in writing the present work.

Although the work is thus our joint production, there has necessarily been a division of labour. The judicialde cisions in Chapter III were collected and arranged by Mr. Rattigan, and I did the same with the *Riwáj-i-áms* in Chapter II, and I am responsible for the general remarks in both these Chapters, and for the whole of Chapter I. Mr. Rattigan has no desire to disclaim any of the views I have expressed; on the contrary, he fully concurs in them. But it is obviously far more easy for a writer to express particular views as his own, and by doing so he can write with greater freedom. The whole of the work, as well as this Preface, has therefore been written by me in the first person.

The plan of the work may be gathered from what has already been said. The Records of Custom were first collected and reviewed in Chapter II, and the judicial decisions were similarly treated in Chapter III. Then Chapter I was written, in which I have attempted to give a short sketch of the Punjab and its tribes, and the social organization of the country. I have then considered what are the general principles which govern this organization, and what are the main features of its Customary Law as disclosed by its Records of Custom and the decisions of its Courts of Justice. I have added some remarks on the light thrown by investigations in the Punjab on the subject of Customary Law generally.

In doing this I have only followed a road already traversed by others. In 1876 Mr. Justice Boulnois, a former Judge of the Chief Court, and Sir (then Mr.) William Rattigan brought out a work entitled "Notes on Customary Law in the Punjab," much in the same way as I, a later Judge, and Sir William's son are bringing out the present work. At that time the *Riwáj-i-áms* were almost unknown, and most of them were not even in existence. The review was therefore necessarily based almost entirely on the decisions of the Court which had been published up to that time, and some of these, as will be seen in Chapter III of this work, have had to be modified in consequence of further evidence as to the true principles of custom. Sir William Rattigan's own work, "A Digest of the Civil Law of the Punjab," is a work of the greatest value, and will always remain so, but

even the last edition does not contain the latest rulings on important questions of custom. It only professes to deal with one part of the evidence on Customary Law, *viz.*, that afforded by judicial decisions, and even as regards these the work, dealing as it does with all branches of custom, has had to be so compressed that Sir William has been able to do nothing more than give the bare substance of the ruling, and quote the cases in which it was given.

Mr. C. L. Tupper, C.S., commenced his work on Customary Law in a manner which indicated that had he been able to complete it, it would have greatly surpassed in fulness and value our present work. The deductions Mr. Tupper was prepared to make even from the evidence before him have been fully borne out by further enquiry. But when Mr. Tupper wrote, the *Riwáj-i-áms* still existed in a complete form for a comparatively few districts, and the whole basis of judicial decision was uncertain and unsatisfactory.

As to the bearing of Punjab Tribal Law on Customary Law generally, no one can be more conscious than myself of the inadequacy with which I have dealt with this point. I would, however, plead in excuse that the whole subject of Customary Law is so full of fascination, and has so many points which may be developed almost indefinitely, that to deal with it adequately would be the work not of three months' leave in the hills, with the fewest possible books of reference, but of a lifetime in the midst of the best libraries. The primary object of this work has been to place before those engaged in the administration of justice in the Punjab, a clear explanation and summary of the Customary Law. If we have succeeded in doing this we shall be quite satisfied, and if our efforts have had the further result of adding anything to the knowledge of Customary Law generally, we shall be more than pleased.

I will only add that the opinions expressed as to what are the principles of Tribal Law in the Punjab are based solely on the evidence on the record, *viz.*, the *Riwáj-i-áms* and reported decisions, and they are, I think, the opinions that must be arrived at by any one who studies this evidence. But if it is contended that mere length of residence and "general knowledge of the country"

is a better basis for opinion as to custom than the study of recorded evidence (although the longest ordinary resident does not in the whole of his life even converse with a quarter of the agriculturists who are carefully examined by a Settlement Officer at the attestation of a single *Riwaj-i-ám*), then I would urge in support of my opinions as personal ones that I have served for more than 30 years in the Punjab, and that for more than 12 of these years I was a Settlement Officer, and for more than 8 I have been a Judge of the Chief Court.

CHARLES A. ROE.

SIMLA :

September 15*th*, 1895.

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TRIBAL LAW IN THE PUNJAB.

CHAPTER I.

GENERAL PRINCIPLES OF TRIBAL LAW.

Area and population of the Punjab.

ACCORDING to Mr. Ibbetson's report on the Census of 1881, the Punjab, including its Feudatory States, has an area of 142,449 square miles with a population of 22,712,120, of whom 18,850,437 are residents of British districts. Rather more than half of the population in British territory are classed as members of landowning or agricultural tribes whose strength per 1,000 of the total population is as follows:—

The agricultural tribes.

Bilúchís and Pathâns	62
Játs	189
Rájpúts	82
Minor Dominant Tribes	74
Minor Agricultural Tribes	75
Foreign Races	22
Total ...	504

Under the head of "Minor Dominant Tribes" Mr. Ibbetson classes those which, like the Ghakkars, Awáns and Kharrals, are found in considerable strength in particular localities, and are in fact the dominant tribes there, but are mainly confined to those localities and do not form a large proportion of the landowning tribes as a whole. "Minor Agricultural Tribes" are tribes which, like the Aráins, have a distinct origin and history of their own, and are found in nearly all parts of the Province, but can hardly be said to be dominant anywhere. "Foreign Races" are groups of foreign origin like the Shekhs and Moghals, which are found scattered amongst the other tribes, but in no way amalgamated with them.

CHAP. I.

Origin of the various tribes.

2. A very complete account of the origin, history and character of the various tribes is given by Mr. Ibbetson, and still more detailed information may be found in the Settlement Reports of the different districts in which the tribes are found in force. It would be quite impossible for me to give even the briefest account of each tribe in detail, and I shall therefore merely repeat the substance of what Mr. Ibbetson says of each of the main groups.

The Bilúchis.

3. Mr. Ibbetson explains that the term "Biloch" is applied to many who are not true Bilúchis, and that in many districts of the Punjab every Muhammad ancamelman is popularly described as a "Biloch." The true "Biloch" claims a descent from Mír Hamzah, a Koréshi and an uncle of the Prophet. In paragraphs 377, 378, 379 of the Census Report a full account is given of the early history of the Bilúchis, and of their advance into the Punjab and of their general character. Their present tribal organization is thus described in paragraph 380: "The tribe, at least in its present form, is a political and not an ethnic unit, and consists of a conglomeration of clans bound together by allegiance to a common Chief. Probably every tribe contains a nucleus of two, three, or more clans descended from a single ancestor. But round these have collected a number of affiliated sections; for the cohesion between the various parts of a tribe or clan is not always of the strongest, and it is not uncommon for a clan, or portion of a clan, to quarrel with its brethren and leaving the tribe to claim the protection of a neighbouring Chief. They then become his *hamsáyas*, or dwellers beneath the same shade, and he is bound to protect them, and they to obey him." (Instances are then given of this).

"The tribe, or *tuman*, under its chief, or *tumandár*, is subdivided into a small number of clans (*pára*) with their *mukaddams*, or headmen, and each clan into more numerous septs (*phalli*). Below the *phalli* come the families, of which it will sometimes contain as few as a dozen. The clans are based on common descent; and identity of clan name, even in two different tribes, almost certainly indicates a common ancestor. The sept is of course only an extended family.

"The tract occupied by each division of a Biloch tribe is sufficiently well defined; but within this area the people are either wholly nomad, or, as is the case within our frontier, live in small hamlets, each inhabited by only a few families, having property in their cultivated lands and irrigation works, but

without any actual demarcation of the surrounding pasture lands. Thus the large and compact village community of the Eastern Punjab is unknown, and our village or *mauzah* is in these parts merely a collection of hamlets included within a common boundary for administrative purposes."

The Pathans.

4. In paragraphs 390 to 392 Mr. Ibbetson describes the character, origin, and early history of the Pathans, who claim a descent from Saul, the first King of Israel. In paragraph 393 their present tribal organization is thus explained :

"The tribe is probably far more homogeneous in its constitution among the Pathans than among the Bilúchis. Sayad, Túrk, and other clans have occasionally been affiliated to it ; but as a rule people of foreign descent preserve their tribal individuality, becoming merely associated, and not intermingled, with the tribes among whom they have settled. Even then they generally claim Pathán origin on the female side, and the tribe is usually descended, in theory at least, from a common ancestor. The *hamsáyah* custom described in paragraph 380 is in full force among the Pathans as among the Bilúchis. But with the former, though it does protect in many cases families of one tribe who have settled with another, it seldom accounts for any considerable portion of the tribe ; and its action is chiefly confined to traders, menials and other dependants of foreign extraction, who are protected by, but not received into, the tribe. Thus a blacksmith living in an Utmanzai village will give his clan as Utmanzai ; but his caste will, of course, remain *Lohár*. The nation is divided genealogically into a few great sections, which have no corporate existence, and the tribe is now the practical unit, though the common name and traditions of common descent are still carefully preserved in the memory of the people. Each section of a tribe, however small, has its leading man, who is known as Malik, a specially Pathán title. In many, but by no means in all, tribes there is a Khán Khel, or chief house, usually the eldest branch of the tribe, whose Malik is known as Khán and acts as chief of the whole tribe. But he is seldom more than their leader in war and their agent in dealings with others ; he possesses influence rather than power, and the real authority rests with the *jirgah*, a democratic council composed of all the Maliks. The tribe is split up into numerous clans, and these again into septs. The tribe, clan and sept are alike distinguished by patronymics formed from the name of the common ancestor by the addition of the word *Zai* or *Khel*, *Zai* being the

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corruption of the Pashtu *zoe*, meaning son, while *Khel* is an Arabic word meaning an association or company. Both terms are used indifferently for the larger or smaller divisions. The frontier tribe, whether within or without our boundary, has almost without exception a very distinct corporate existence, each tribe, and within each tribe each clan, occupying a clearly defined tract of country, though they are in the Indus valley often the owners merely rather than the occupiers of the country, the land and smaller villages being largely in the hands of a mixed population of Hindu origin who cultivate subject to the superior rights of the Patháns. These people are included by the Patháns under the generic and semi-contemptuous name of Hindki, a term very analogous to the Jat of the Bilúch frontier, and which includes all Muhammadans, who, being of Hindu origin, have been converted to Islám in comparatively recent times."

Jats and Rájpúts.

5. In paragraph 421 *et seq.* Mr. Ibbetson notices briefly the much debated question of the origin of the Jats and the Rájpúts. Whether they entered India in two successive waves, or whether, as is the general Jat tradition, they were both originally one tribe, *viz.*, Rájpúts, and the Jat tribes are the descendants of a Rájpút ancestor who lost his status by marrying a woman of an inferior tribe, or by otherwise transgressing caste or tribal rules, is of little practical importance. Mr. Ibbetson inclines to the opinion that both were originally of the same race, but that this was Jat rather than Rájpút, and that a process of elevation and degradation long went on by which some families or sections of the tribe became Rájpúts, and others remained, or sank down to, Jats. I think myself that there are, at any rate in the small Hill States, tribes or families who can trace an undoubted descent from the class, if not from the individuals, who are represented as the Rájpúts, or sons of kings, in the Sanskrit epics. On the other hand, it is extremely improbable that all the Jat tribes could be the descendants of such ancestors. What seems certain is that both Jat and Rájpút belong to one common original stock; both have been in the country from time immemorial, and resemble one another closely in all the main features of their Tribal Law, and their tribal life. For the purpose of enquiring into their Customary Law it is quite unnecessary to decide what was their remote origin, or what formed the first tie, or division, between the two races. It is sufficient to class both Jats and Rájpúts as original Hindu tribes, whose subdivisions, or *gôts*, hold their land in blood

more or less compact in all the districts of the Eastern and Central Punjab. In numbers the two constitute more than half of the landowning tribes, and the extent of their holdings and of their social and political importance is even greater than their numbers.

Minor dominant tribes.

6. The Minor Dominant Tribes are described by Mr. Ibbetson in paragraph 461 *et seq.* All that need be here said of them is that, as he points out, these tribes usually claim in the east of the Punjab a Rájpút origin, and in the west a descent from some famous Muhammadan tribe or leader. These claims are, in almost every case, unfounded, and the tribes are, as a rule, ordinary Jats.

Other minor tribes.

7. The other minor landowning tribes are dealt with in paragraph 483 *et seq.* They are either inferior, or minor, offshoots of the greater Rájpút and Jat tribes, or are mere conglomerations of low-caste agriculturists to whom a generic or tribal name has been given.

Foreign races.

8. As to the foreign races, Mr. Ibbetson says (paragraph 499) that the Sayads should have been classed among them, but they have been classed as priests. "The present group is divisible into three sections (1) the Arab and Shekh; (2) the Túrk and Moghal; (3) the Ghulám and Qazilbásh. The last two, and probably many of the Arabs and Túrks, are true foreigners, and have a good claim to the names they bear; but the Shekhs and Moghals are for the most part mere pretenders. What Rájpút is to the Hindu, Shekh, Sayad, and in the west of the Punjab, Moghal is to the Musalmán, and every convert of low caste who wishes to glorify himself assumes one of these titles, whilst tribes whose origin is lowly, or has been forgotten, trace their descent from the people of the Prophet or of one of the Muhammadan conquerors of India."

Local distribution

9. It is again impossible to give a detailed account of the localities in which particular tribes predominate; but, speaking broadly, they are distributed in the following manner:—All the Punjab to the east of the Sutlej, including the districts, —Delhi, Gurgáon, Rohtak and Hissár,—which formerly were attached to the North-Western Provinces, is held by tribes, mainly Jats and Rájpúts, of Hindu origin, some of whom have become Muhammadans, though most of them have remained Hindús. The same is the case in the central districts of the Punjab, to the north of Montgomery, from the Sutlej to the

CHAP. I. Chenáb, where, however a large number of Hindús have become Sikhs (who are also to be met with in considerable numbers in the eastern districts) without any material change in their Customary Law. The frontier districts along the whole of the Indus valley from Hazára to Dera Ismáil Khán, are held by original Muhammadan tribes, Patháns in the north and Bilúchís in the south. In the intermediate districts, the old Ráwalpindi Division to the north and the old Multan Division to the south, there is, as might be expected, a considerable mixture of tribes, the great majority of whom are now Muhammadans, although most of these were originally Hindús. In the eastern and central districts the village communities are ancient and strong, and the tracts occupied by the different tribes generally lie in compact blocks. In the Firozpur District a single tribe is said to occupy an area of over 1,000 square miles without a break. In the frontier districts, village communities are in their infancy, and although all the land has been divided into villages, the main characteristics of the tenures are still tribal in their nature. In what I have termed the intermediate districts, whole villages, and even groups of villages, are found which belong to a single tribe, and resemble in every way the villages of the Eastern and Central Punjab. But some of the villages, especially in the southern districts, are merely a collection of hamlets formed into a village for administrative purposes, and in many districts, especially in the north, the proprietary body is so mixed that the village can hardly be said to belong to any particular tribe.

Village communities.

10. In his note in the Settlement Report of the Dera Gházi Khán District, Mr. Tupper has explained the various ways in which property in land has there originated. He shows that whilst no doubt in many instances individuals have acquired their rights by settling on and reclaiming waste lands by their own exertions, the chief origin of titles has been tribal distribution. In the first chapter of the second volume of his work on Customary Law, Mr. Tupper deals with the subject at greater length and in a more general manner, criticizing Sir Henry Maine's theory that the order of development has been the Family, the House, the Tribe; he expresses his decided opinion that the order should be reversed, and that, at least as regards proprietary right, it has been the Tribe, the House, the Family. I will not attempt to express an opinion except as regards the Punjab, and here I have no doubt whatever that

Mr. Tupper is right. However the tribe itself may have been formed (very probably Mr. Ibbetson's account of the formation of the Bilúch tribes may apply to most other tribes), it seems clear that for a considerable time it has held its land jointly, with no idea of individual right, except the right of each member of the tribe, to share in the common property. This is how the tribes beyond our border hold their land to this day, and the condition of the same tribes after coming under our rule is only a stage more advanced. With the latter there has been an actual distribution of tribal lands into villages carved out by a higher authority. Where no such authority intervenes, the process of development would naturally be slower and less systematic. It is not to be supposed that the whole tribe ever held a general meeting and made a formal distribution of its land amongst its different subdivisions and families. What would naturally take place would be that when once a tribe had given up its migratory habits and settled down permanently on a particular tract of country, the various groups of families most closely connected by ties of blood would select the nearest spots most favourable for cultivation, build houses on them and cultivate jointly. Each collection of such groups would soon cease, if it ever commenced, the practice of contributing its produce to a common stock for the whole tribe, and would soon be regarded as exclusively entitled to the permanent possession of its cultivated lands. The waste or pasture lands between the different settlements would for some time continue to be regarded as common property, but in course of time these too would be demarcated. When this has been done, we have the ordinary village community, but it is quite possible for such a community to be formed without any definite fixing of the boundaries of its waste lands. They have, in fact, existed in many districts in the south-west of the Punjab, where the boundaries of the waste were not finally settled until after more than 20 years of British rule. When the numbers of a village community outgrew the productive powers of its lands, individual members, who found their share too small, would leave it and found a new village elsewhere, but usually as near to the parent village as possible. For every village in the Punjab there has been prepared, in the course of settlement operations, a record called the village pedigree table, which gives an account of the founding of the village, and traces the descent of every single proprietor from

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his ancestor who first settled in it.* Making every allowance for mere legend and myth, the information contained in these records as to undoubted matters of fact is invaluable. Taken as a whole, they shew clearly that villages in the Punjab were formed, as a general rule, either by subdividing the lands which an original parent village had appropriated to itself on the first settling down of the tribe, or by colonists from such villages. They also show that within the village itself the same order of development has frequently—I may say most frequently—been the rule. Many villages are no doubt to be found in which possession has from the first been the measure of right; where each of the original founders simply broke up as much land as he could and appropriated to himself its produce. But almost invariably when there has been a single founder, and usually when the founders have been near relatives, we find that the village was for some time after its foundation held in common; that it was then subdivided according to descent from the original founder or founders; and that where these shares are not still in force but have been succeeded by a measure of right founded on possession alone, the change has been very gradual. Mr. Tupper is right in saying that, speaking of them as a whole, the village communities in the Punjab consist of groups of families bound together by the tie of descent from a common ancestor, and that it is still the feeling of kinship, and not the mere common interest in the land, which regulates their customs. No doubt there are villages, especially in the south-west of the Punjab, in which a common interest in the land, or contiguity, as Sir Henry Maine calls it, has from the first been the sole bond of union. Individuals have sunk wells in the waste, receiving a grant from Government of from 16 to 50 acres of land, and where several such grants lie near together they have been formed into a village, and the intervening waste thrown in as common land. I myself, as Settlement Officer, have created several such villages in the Montgomery and Multan Bár. More were also created under native rule, and very probably in some cases the families have come together of their own accord.†

* I regret to hear that under recent orders the pedigree tables of the later settlements only go back for a few generations, thus rendering an invaluable record almost valueless.

†It is noteworthy that in all these south-western districts the answers in the *Riwáj-i-ám* or Records of Custom, all recognize contiguity as a ground on which pre-emption can be claimed, and place it for this purpose next after near agnatic relationship.

11. Mr. Tupper has also given in the second chapter of the volume just referred to a very complete description of the internal organization of the village. Where the village is a mere group of wells or hamlets, we cannot expect to find any general *abádi* or dwelling place, but in the ordinary village the *abádi* is its main feature. In no village, not even in those in which all proprietary right is still joint, do the individual proprietors have a common dwelling house and common table. Each has his own house, with its surroundings, the privacy of which is strictly guarded, and which is regarded as his exclusive property, although the site forms part of the common land of the village. Nor do we find in joint villages, or even in joint holdings, that the produce of the cultivated lands is ever really brought into a common stock and then distributed. What happens in practice is that each cultivating proprietor takes the whole of the produce of whatever portion of the joint land he actually cultivates, and pays the land revenue assessed on it, and perhaps a light rent in addition. This rent, and all rents paid by tenants, and all income derived from the waste, goes to the common fund, or *mulbah*, from which all the common village charges, entertainment of guests, bribes to officials, &c., are paid. If there is any surplus, it is not distributed in cash, but the lambardárs or headmen with whom the administration of the common fund rests, if they do not embezzle it themselves, apply it to payment of the land revenue, thus reducing the amount to be paid by each shareholder. When a village ceases to be held jointly, and the proprietors become, by partition, sole owners of a definite area, the only difference in village administration is that the income of the common fund is reduced. The whole proprietary body, or where the proprietors belong to different tribes, those of each tribe, constitute the "brotherhood" (*barádari*), and in each family the agnates descended from the ancestor who first acquired its land are the *wárisán yak jaddi*, or agnatic heirs.

Internal organisation of the village.

The "brotherhood."

The "wárisán yak jaddi."

12. It is the object of the present work to consider what are the principles which govern the individual proprietors as regards succession to, and power of dealing with, this ancestral land. The most obvious and natural presumption of an "intelligent foreigner," who knew of the existence of distinct bodies of law called "the Hindu Law" and "the Muhammadan Law," would be that, as the proprietors are Hindús or Muham-

Rights of individual proprietors in their ancestral land.

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madans, they follow their respective codes. He would think that a sufficient protection had been given to all local or tribal peculiarities, if any one alleging a custom at variance with the Hindu or Muhammadan Law were allowed an opportunity of proving its existence. The officers who, on the annexation of the Punjab, had to arrange for the administration of civil justice, who were not merely "intelligent," but also particularly able and experienced foreigners, made this presumption, and framed their regulations accordingly. They could hardly have done otherwise, for the existence of a body of Tribal Law, distinct from the Hindu and Muhammadan, was not, and could not be, then known. The result of their action will be seen in Chapter III, the review of the decisions of the Civil Courts. It is hardly an exaggeration to say that, if an "intelligent foreigner" had been called upon in bygone times to decide disputes regarding land amongst the Scotch clans, or the Irish septs, and if he had presumed that Protestants followed the Bible, that is, the Levitical Law, and Roman Catholics the Roman or the Canon Law, his presumption would have been equally near, or far from, the truth.

Hindu Law.

13. The Code of Manu, which is the first embodiment of Hindu Law is, as Sir Henry Maine observes in his "Ancient Law," the work of the Brahmins, and of comparatively recent date. It belongs to the period when the exposition of the law has passed from the people themselves, or their divinely inspired king or judge, into the hands of a specially qualified and privileged class, in this case the Brahmins. Sir Henry Maine observes, "The Hindu Code, called the Laws of Manu, undoubtedly enshrines many genuine observances of the Hindu race, but the opinion of the best contemporary orientalists is that it does not, as a whole, represent a set of rules ever actually administered in Hindústán. It is in great part an ideal picture of that which, in the opinion of the Brahmins, ought to be the law." I would further remark that, although it treats of men, before individuality has been developed, as still grouped in families, it confines itself to laying down their rights and duties as members of the family. These too are made to rest on a religious basis. Succession is no doubt in the main agnatic, but the principle of it is religious union, the joining in the offering of the *purd* in recognition of the common ancestor, and the main purpose of adoption is spiritual benefit. The tribe and the commune are ignored, and no distinction

is made between agricultural land and other immoveable property. Mr. Ibbetson, in para. 333 *et seq.*, of his Census Report, has pointed out how utterly different the social scheme depicted in Manu is from that which exists, or as far as we know ever has existed, in the Punjab. It is of course extremely improbable that society was ever really organized as described by Manu, or that the four castes of Brahmins, Kshatriyas, Vaisiyas and Súdras ever represented anything more than the natural division of the members of a community into priests, kings and nobles, and the fighting class generally, merchants and traders, and "the lower classes."* But, however this may be, and however caste, as a religious institution, may form the basis of society elsewhere, it is quite certain that amongst the agriculturists of the Punjab the basis is tribal divisions and subdivisions, and, below these, occupations. The Hindu agriculturist of the Punjab knows nothing of caste, except as represented by his tribe. No doubt he respects the Brahmin, and calls him in and feeds him on occasions of rejoicing or sorrow, but he would never dream of referring to him or to the Hindu Law for guidance in his daily life. If he has ever heard of the "Dharmsháshtra" at all, which is very improbable, he has only done so as a Spanish peasant may have heard of the Bible; he knows nothing whatever of its contents or principles, nor could the Brahmin himself enlighten him.† Mr. Ibbetson notices some minor points, such as widow marriage, on which Hindu tradition may have slightly affected social usage; but it is perfectly certain that among the Hindu agriculturists rights on land are in no way regulated by Hindu law. His own Customary Law may have features common to the Hindu Law, as well as to other early codes, but it cannot be said to be derived from it.

Muhammadan Law.

14. The Hindu Law cannot be applied to the Hindu tribes, because they have never in fact followed, or even heard of it, and it is framed for a different state of society. But the Muhammadan Law is still more inapplicable to the Muhammadan tribes. Those of them who are converted Hindús know nothing of the "Shara," except perhaps its name. The purely Muhammadan tribes of the frontier have no doubt heard of it, but they have the vaguest notions of its provisions. Being

* Such a description would be perfectly true of Europe in the middle ages.

† An amusing example of the general ideas on this point is given by the answer of the Hindús in the *Riwáj-i-ám* of the Jhang District. Having no real conception of the nature either of wills or the "Dharmsháshtra," they have solemnly recorded that in future "wills will be regulated by the 'Dharmsháshtra.'"

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bigoted Muhammadans, and much under the influence of the *mullahs*, they are ready to assert, in opposition to the plainest facts, that they follow the "Shara" in all things. The consequence of attempting to apply this law to ancestral land is thus graphically described by Mr. Tucker, C. S., the Settlement Officer of Dera Ismáil Khán (Punjab Customary Law, Volume II, page 245). After remarking, as other officers have done, that however suitable the Muhammadan Law of succession may be for a wandering tribe, whose property consists of camels and other moveables, it is quite unsuited for dealing with land, he says: "It is seldom that the joint lands of a deceased proprietor cannot (can ?) be divided immediately on his death. In the course of a year or two, one or two of the heirs themselves die. Some of the heirs are women, and married to cousins who are themselves heirs. The family retains the property in joint ownership, perhaps for ten or twelve years, when some cantankerous sharer claims partition. By this time, if the case is made over to a Kázi, the common denominator of the fractions on which the estate is held, will probably be found to consist of five or six figures. The exact order, too, in which the different members of the family have died in the interval must be ascertained, as brothers exclude nephews, sons exclude grandsons; and the fact of one dying a day or two before the other may alter the share entirely. To ascertain the exact order in which women married away in different families may have died, after some years have elapsed, is often impossible. The family of the chief Azim Khán of Gandi Umr in one case agreed to abide by the 'Sharyat,' and have been engaged in its meshes ever since. No sooner has the account of their proprietary shares been closed up than the death of one or two more uncles and aunts throws everything again into confusion."

When we examine the *Riwáj-i-áms* we shall find that very few tribes even profess to follow Muhammadan Law, and that those who do profess to follow it evade it in practice. The assertion that Muhammadan Law is followed is dictated partly by bigotry and partly by ignorance. Among the frontier tribes the idea of individual rights in land is entirely novel, and it is quite natural that when a body of Muhammadans are asked how an unknown subject should be dealt with, they should reply, "By Muhammadan law." This is strikingly illustrated in the replies regarding wills. Wills are entirely unknown, and opposed to, the whole body of Tribal Law, both Hindu and

Muhammadan. I have already noticed how the Hindús of one district have said that they will be governed by the "Dharmsháshtras," and the usual reply of the Muhammadans throughout the Punjab is that they are governed by the "Shara." It is not for one moment to be supposed that those who give this reply have the slightest knowledge of the elaborate provisions of the Shara regarding wills, and seriously mean that they are followed. They really mean that they know nothing about the matter. The general principles of Muhammadan Law have no doubt had, especially in the western parts of the Punjab, some influence on the Customary Law as regards the capacity of females, and males related through them, to receive gifts of land, or even, in some cases, to inherit it, but in its details it is utterly useless, or misleading, as a guide. The fundamental principles of Muhammadan Law, that an estate on the death of its owner is divided amongst numerous sharers, amongst whom females are included, each of whom takes his share in absolute ownership, are the exact opposite of the very basis of Tribal Law, which is agnatic succession and limited ownership.

Tribal Law.

15. That the tribes and village communities and their members must be governed by some law is evident from the simple fact that they have held together so long. We find from the village pedigree tables that the proprietors are males only, for the most part related by agnatic descent from a common ancestor, or groups of ancestors. This result can only have been attained by the observance of some general principle of succession, and some rule against the admission of strangers. We will proceed almost immediately to consider what are these principles and rules; but, before doing so, I would make a few general remarks on one or two points.

Contrast between modern and primitive society.

16. The first of these is the difficulty, noticed by Sir Henry Maine in his "Ancient Law," of realizing the difference between the state of the society in which we are ourselves living and that of the society for whose guidance the laws we are investigating were framed or developed. I know no way in which the contrast can be more vividly brought out than by standing, as I have done myself, on the walls of the fort at Jamrúd, our furthest outpost in Pesháwar, and looking towards the Khaiber Pass. Behind us we have all the apparatus of modern civilization: rail roads, post offices, telegraphs, a most elaborate machine for the executive government,

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courts of justice practically independent of, and even controlling, the executive, modelled both as regards their law and their procedure as closely as possible in accordance with European ideas; and, finally, we have driven out to the fort in a hired, and by no means uncomfortable, barouche and pair. Before us, within two or three miles, we have a country where roads, except the military roads made by the English and Afghán Governments, can hardly be said to exist, where the very conception of rights in property has hardly advanced beyond that of joint ownership by the tribe, where the only law recognized is the decision of the Tribal Council (*jirgah*) and where private wrongs must be redressed by private vengeance. Just beyond our borders there are two villages, lying only a few hundred yards apart, who, for some reason, probably a murder or the abduction of a woman in past days, are at deadly feud. Periodically they turn out and fire into one another without any apparent special cause; and I believe that the story is perfectly true that a deputation from one of the villages one day solemnly waited on the Officer Commanding the Artillery at Pesháwar, and offered him a hundred rupees a shot if he would bring out one of the guns of his battery and fire at their enemy. They were even willing to give a less sum if he would only impress the enemy by firing blank cartridge! A little further on there is a large house, the residence of a considerable landowner who has often business in Pesháwar. The house is only a mile or two from our border, yet if this gentleman were to attempt to canter over the intervening plain he would be shot to a certainty; to avoid his enemies he has to make a circuit of some 20 miles in order to reach our territory. Modern, the most modern, fire-arms are the only marks of civilization in the country, and these are highly appreciated.

Varieties within British territory.

17. Even within our own territory there is also a considerable difference as regards states of society, not only between ignorant villagers and native gentlemen in Lahore who have been educated or called to the Bar in England, but also between the agricultural tribes themselves. On our western frontier the tribes are of the same kith and kin as those beyond our border whose condition we have just noticed; they may be described as "only just caught," and their ideas on law and custom are still of the most primitive kind. In the Eastern Punjab the tribes, though very clearly marked, have been largely subdivided into

gôts or clans, and these again have been formed into separate communities. The village, rather than the tribe or even the clan is the unit of society, and even within the village rights in land are growing to be looked on as matters affecting groups of agnates—the *wârisán yak jaddi*,—rather than the "brotherhood" or village generally. For fifty years questions of custom have been decided by law courts adjudicating on the claims of individuals, rather than by the *panchâyat*, or committee of the brotherhood, and these decisions have affected the ideas of the people regarding custom, if they have not as yet affected custom itself.

No general custom as to the Punjab.

18. Under such circumstances, seeing that the origin of all the tribes is not the same, and that even with tribes of the same origin local and social conditions have greatly differed, it would be impossible that there could be a single body of Customary or Tribal Law, common to the whole of the Punjab. On this point I will only quote the remarks of Sir H. M. Plowden, in *Punjab Record*, No. 50 of 1893, made with reference to a "head note," which stated that a certain rule was "the general custom of the Punjab." He says :—

"It seems expedient to point out that there is, strictly speaking, no such thing as a custom, or general custom, of the Punjab in the same sense that there is a Common Law of England; a general custom applicable to all persons throughout the Province, subject (like the English Common Law) to modification in its application, by a special custom of a class, or by a local custom.

"There are, in the rural portions of the Province, numerous groups of persons connected with the land who follow in most matters customary rules, which are not identical with the rules of the Hindu or the Muhammadan law. A considerable mass of information as to the customary rules observed by numerous groups in different parts of the Province has been and is being accumulated by the labours of Settlement Officers, and in the records of the Civil Courts. There are in existence numerous bodies, so to speak, of Customary Law of different landowning societies, or communities, in the Punjab, which can be compared, and which exhibit a remarkable degree of similarity in many particulars, and it is possible, after such comparison, to propound, on some points,

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a rule that can be stated in an abstract form, irrespective of any particular group or locality, and to affirm that it is generally recognized by custom in the Punjab, so far as it has been ascertained. An example is that in the Punjab, by custom, the widow of a sonless man is ordinarily only entitled to possession and enjoyment of her husband's land for life, or till re-marriage. The phrase under notice really imports no more than this, that, among the various groups who are governed by custom in the Punjab, a particular usage is generally found to prevail, or not to prevail, as the case may be * * *.

"Let me add that it is not to be understood that in saying that there are 'bodies of Customary Law in existence,' I refer to the written records of custom. The Customary Law I allude to is an unwritten law, and these records are only evidence, the value of which varies considerably, as to what the unwritten law is."

Origin of Customary Law. Opinion of Sir Henry Maine.

19. I have referred in paragraph 10 of this chapter to Sir Henry Maine's opinion that the order of development of the forms of social life has been the Family, the House, the Tribe, the Nation. Similarly, he is of opinion that the germ of Customary Law is to be found in the *Patria Potestas*, or the absolute and arbitrary orders of the head of the family to those immediately under him. The first instances of laws enforced from outside the family are the almost equally capricious orders of the divinely inspired chief, or the "Themistes." It is only when these orders have ceased to be mere personal commands by the chief, when they are the decisions of his council, a body of experts acting on precedents, that Customary Law comes into existence. He thinks it may be accepted as certain that the "Themistes" preceded, and were the foundation of, Customary Law.

Partially true as regards the Punjab.

20. This last proposition is no doubt true of Customary Law in its later stages, when it has become a fully developed system capable of dealing with all kinds of disputes. In his Settlement Report of the Bannu District Mr. Thorburn has given us a very graphic account of how such a development of the law takes place. He says:—"Most of our wildest tribes scorn the idea of a woman having any rights in property;

they tell you that she is as much a chattel as a cow, and, if she, when widowed, desires to retain any interest in her husband's property, she must marry his brother; and that a man to be entitled to hold his share of land, must be an able-bodied fighting man. Our Courts do not uphold such 'customs,' and the settled Wazírís are now inclining to accept the general rule of the district that a widow, as long as she remains a widow, and there be no sons, has a life interest in her deceased husband's property; and that all sons, whether strong or sickly, have equal rights of inheritance. Disputes as to the devolution of property used generally to be decided at home by a board of 'ancients,' or grey-beards, who in their judgments followed custom, which was analogous to that of the Wazírís noted above; but whenever the parties could not agree they went into Court. As often as not they had previously (under the influence of the *mullahs*) determined that each should be bound by the Shara law, though neither of them had any conception of what that law ordained. If the Shara was not followed, the Court decided the case according to its own lights as to what the custom ought to be, and its own lights naturally caused it to decide that all sons should share equally, that a widow should take a life interest in her husband's property, if he left no sons, and so forth. Take another instance. The extent of the *Patria Potestas* with reference to inherited property was a question which had to be answered. Could a father alienate his whole inheritance, though male issue were alive? If not all, how much? The Banúchís at first unanimously declared that he could give away all to whomsoever he chose, such being the Shara rule. Asked for examples of the exercise of such power, not one was forthcoming. Had any one so alienated half his land? No cases known. As with the Banúchís, so with the Isakhels and others. Thus reasoning from a series of negatives the people were over and over again driven to admit that their first replies were erroneous; and we had to record our answers to the effect that no custom on the point existed, but that all were of opinion that, on disputes arising, if such and such a rule were adopted, an equitable custom would grow up. Here and there I shaped public opinion on most questions in the direction in which I myself and others of longer experience thought equitable."

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What took place in Bannu, has also taken place in other districts, where custom was in its infancy, and no doubt, in course of time, Customary Law will rest almost entirely on the judgments of the Civil Courts, especially of the Chief Court. As observed by Sir Henry Maine, it will then cease to be unwritten law, and will become written law in a special form.

But only partially.

21. But these facts do not in my opinion in any way prove that the origin of the Customary Law is a series of "Themistes," or decisions in particular cases, still less do they prove that these decisions were mere arbitrary commands. The early judgments of our own Courts, established after the annexation of the Punjab, are as near an approach to the "Themistes" as could well be conceived. The Judges were, if not divinely inspired, gifted with mental powers far above those of the people whose disputes they decided, and their power to enforce their decisions was irresistible. Yet we find them freely acknowledging the existence of custom, and basing their decisions on it, except when they considered that there were special reasons for rejecting it. Under native rule the power of the Chief, or his representative, the Judge, is in theory strictly personal and unlimited, yet there are customs which even the Amír of Kábul could not violate by an arbitrary decision. But all the evidence shows us that amongst the tribes of the Punjab the agency for deciding disputes was not a personal Chief or Judge, but the brotherhood or the committee of the "brotherhood," known in the frontier tribes as the *jirgah*, and in the Punjab generally as the *panchâyat*. On what did these bodies base their decisions? Assuredly not on "reported cases." Nor could the decisions have been merely capricious. No doubt, in certain cases, such as the admission of an outsider into a frontier tribe, or sanctioning an adoption in a Hindu tribe, the Court would be influenced by the personal feelings of its members towards the person to be admitted or adopted. It is, or was, one of the great advantages of a tribunal of this kind that there is an elasticity in its rules, and that all circumstances can be taken into consideration. But we may be quite sure that on main points, such as whether a marriage was opposed to Tribal Law, or the rights of females, the decision was in accordance with what was believed to be fundamental custom. I would modify Sir Henry Maine's proposition, and say that, whilst Customary Law in its details has grown up from decisions in particular cases, the general

principles of the law existed before the decisions. Disputes requiring decision can only arise after individual proprietary right has come into existence. Individual property is amongst the tribes of the Punjab, and I should think generally, merely a development of joint property. For the existence of joint property there must be one united community, and to keep a community united, some broad general principles must be consistently observed.

General principles of Tribal Law.

22. What these general principles are, both in the earlier and in the later stages of Customary Law, we shall see more clearly when we have examined the evidence in detail. This evidence consists, as stated by Sir H. M. Plowden, of the *Riwáj-i-áms*, or records of tribal custom, prepared by the Settlement Officers during the progress of settlement, and the records of cases enquired into and decided by the Civil Courts. The "village pedigree tables," already described, have been used freely both by Settlement Officers to verify the answers recorded in the *Riwáj-i-áms*, and as evidence by the Civil Courts. It need hardly be said that they are the most valuable evidence we could possibly obtain. It is hardly too much to say that from this evidence alone it would be perfectly possible, although the work would be almost the work of a lifetime, to ascertain all that is to be known about the Tribal Law. They give us a complete list of the families, or groups of families, of all the landowning tribes in the Punjab. If we were to arrange them according to tribes and districts, we should see in what cases the general rule of agnatic succession had been departed from, and we should be able to say in what tribes or localities the departures were sufficiently numerous to constitute a special custom. This is what the Civil Courts endeavour, or should endeavour, to do with regard to all the pedigree tables within a reasonable distance, whenever the existence of a special custom is alleged, and I think that this is what should be done by Settlement Officers when revising the settlement of a district for which a *Riwáj-i-ám* has already been prepared, instead of making an entirely new enquiry, or blindly accepting the old record. In my reviews of the *Riwáj-i-áms*, and the judicial decisions in the two following chapters, I have endeavoured to explain fully the nature of these two classes of evidence; and I have also explained why I have confined my consideration of the Customary Law to certain subjects. I will now proceed to sum up this evidence, taking the subjects in the order in which they are dealt with in the other chapters.

Strict agnatic succession the general rule.

23. In paragraphs 10, 11, and 12 of Chapter II, I have pointed out that the general rule of succession is strictly agnatic, and that females are entitled to maintenance only. Widows are usually allowed to hold their husband's estate for life, or until re-marriage, in satisfaction of this right, and the same privilege is extended by some tribes to unmarried daughters, and, but more rarely, to married daughters who become widows, but return to their father's house because their husband's agnates are unable or unwilling to support them. Where married daughters are allowed to succeed, they do so merely as a means of passing on the succession to their sons. It is only in Multan and Dera Ismáil Khán that it is asserted that when a daughter succeeds she takes absolutely, and even in these districts the assertion seems unsupported by evidence. The same may be said of the very few assertions (paragraph 15, Chapter II), that, even when there are sons, daughters take their share according to Muhammadan Law. Their right to succeed in the absence of sons is asserted by more, but still by a very few, tribes (see paragraph 16 *id.*), who are strictly endogamous, and who might be supposed to be greatly influenced by Muhammadan Law, and even in these cases the answers require confirmation. More numerous tribes fix a limit to the exclusion of daughters either by saying distinctly that they succeed in the absence of certain agnates, or by mentioning these agnates as the agnates who exclude them. These tribes, and the limits they fix, are given in detail in paragraphs 17 to 20, and in paragraph 21 I have explained why I consider that, except when very near limits are mentioned, the real meaning of the answer is that a daughter is excluded by all agnatic descendants of any common ancestor who ever held the land. Daughter's sons or husbands can only succeed through the daughter, and should a husband thus succeed, he does so on a life interest only. It has never been laid down by the Chief Court that at a certain degree of distance, or nearness, the presumption turns against, or in favour of, the agnates. The general principle of succession to ancestral land amongst the tribes of the Punjab is certainly agnatic, and the cases in which daughters, or males related through them, have established a right to succeed must be regarded as exceptions, though in the Western Punjab these exceptions may be numerous. It is also most probable that it would be found that in nearly, if not quite, all these cases the claim was based on

Exceptions in favour of daughters and their sons.

an alleged gift, just as the Settlement Officer of Peshâwar found, on inquiry into the alleged instances of daughters succeeding in the presence of sons, that these were really all cases of gifts by brothers. I should much doubt if any precedent, judicial or non-judicial, could be found to support the right of a daughter, or males claiming through her, to succeed simply as an heir without any act of gift or adoption. In the very few answers which assert that when the daughter and her husband have been taken by her father to permanently reside in his house, they succeed in default of sons, it is either stated or implied that a *khânadâmâd*, or son-in law of the house, is a regularly recognized institution, and that to make an ordinary son-in-law *khânadâmâd* is a definite act equivalent to an appointment as heir.

POWER OF DISPOSAL OF PROPERTY.

Limits to power of disposal of property.

24. It is but a necessary result of a strict rule of agnatic succession that the power of the holder for the time being over the estate should be subject to some control by the agnatic heirs. Were it not so, were the holder allowed to sell or mortgage the estate for his own benefit, or to divest the succession for the benefit of others, the agnatic rule would soon cease to operate, and the social or family system based on it would be destroyed. As regards the power of sale and mortgage, the entries in the records of custom are given fully in paragraphs 26 and 27 of Chapter II. With very few exceptions, they recognize this power only in cases of "necessity," and in paragraphs 11 and 12 of Chapter III, I have endeavoured to explain what "necessity" is. It will be seen that the very few tribes who assert an unrestricted power of alienation by sale, mortgage or gift, are, almost without exception, frontier tribes, to whom the idea of individual property in land is quite a novelty, and who do not realize the true meaning or consequences of their answer. We find few or no precedents to support the alleged power, and many of the tribes as soon as they have realized the situation have recorded that in future a proprietor will only be able to sell or mortgage for "necessity." The judicial decisions on the power of sale and mortgage are given at length in paragraphs 6 to 10 of Chapter III. It will be seen from these that the Full Bench rulings of the Court, published as

Sale and mortgage.

CHAP. I. *Punjab Record*, Nos. 107 of 1887 and 73 of 1895, have laid it down that the presumption is against the existence of an unrestricted power of alienation. The later cases have all tended to strengthen this presumption, and the few cases in which alienations have been upheld have really been treated as cases of gifts to near relatives which ought to be upheld for special reasons.

Unequal distribution amongst heirs.

25. The most restricted power of altering the usual course of succession is that of the holder of an estate to distribute it unequally amongst his sons or other agnate heirs. If Sir Henry Maine's theory that Customary Law originated in the *Patria Potestas* were correct as regards the Punjab, we should expect to find this power very generally recognized. Yet we find that the great majority of the *Riwáj-i-áms* expressly deny it, and the few who profess to recognize it (and these are nearly all on the frontier) are either unable to give any instances of the exercise of the power, or add the proviso that the distribution must be substantially just, in accordance with the recognized shares. In the only two judicial cases in which this question has been directly before the Chief Court, it was found that the power claimed did not exist, and other cases of gifts to agnates, to the prejudice of other agnates equally related, have been set aside on the same ground.

Adoption.

26. The other modes by which the succession may be altered are adoption, or the appointment of a sole heir, and gifts, either *inter vivos* or by will. I have elsewhere shown how intimately the two subjects of adoption and gift are bound together in the minds of the people, but it will be better to consider them separately. In my review of the *Riwáj-i-áms* and in Sir H. M. Plowden's judgment in the leading case on adoption, No. 50 of 1893, *Punjab Record*, it has been pointed out that the customary adoption of the agricultural tribes of the Punjab has no real connection with the adoption of Hindu Law; the latter is based on the idea of spiritual, the former on the idea of purely practical and temporal, benefit. It is similarly

Not universal.

pointed out that the practice of adoption is by no means universally recognized; speaking generally, it is unknown to purely Muhammadan tribes, that is, throughout the frontier districts, and in the greater part of the old Ráwalpindi and Multan Divisions, and in some parts of most districts; it is confined to tribes of Hindu origin, and even amongst these there are important exceptions who refuse to allow it. All the tribes who recognize

A public act necessary.

adoption insist that some definite public act, usually an announcement before the assembled brotherhood, and a feast, for which a duly registered or openly proclaimed deed of adoption is sometimes accepted as a substitute, is essential to its validity. The Courts have also held this to be essential, and where it has been omitted they have refused to recognize the adoption (see paragraphs 14 to 16, Chapter III).

Restriction on selection.

27. As observed by Sir H. M. Plowden in the judgment already quoted, as adoption is only one mode of diverting the succession, we should expect to find it as jealously restricted as other modes of alienation, and, as a rule, we do so find it. The general restriction throughout the Province, amongst the tribes which recognize adoption, is that the person adopted must be one of the agnatic heirs (*wárisán yak jaddi*). Most of the *Riwáj-i-áms* say "the nearer his relationship the better," and some (paragraph 32, Chapter II) lay it down as a positive rule that a more remote cannot be adopted in the presence of a nearer "suitable" agnate. The cases in which this rule has been contested are given in paragraph 19 of Chapter III, and although the decision was usually in favour of the adoption, I have given my reasons for thinking that the Court would not now refuse to recognize this restriction or even hold that there was any presumption against it.

General restriction to agnates only, sometimes to the nearest.

Daughter's sons.

28. The adoption of a daughter's or sister's son is a violation of the rule of agnatic succession, and also, except in the case of endogamous tribes, of the tribal rule which says that the land must never leave the *gôt* or clan. But the violation is a not unnatural one, and it is not likely that such an adoption would be objected to by any one but an agnate whose rights are affected by it. Some tribes still maintain that under no circumstances can such an adoption be made, but it may be said that it would usually be held valid, if there were no agnates or if they assented to it. There has never been any judicial decision to the contrary, nor does any one but an agnate appear to have contested an adoption of any kind. The answers recorded in the *Riwáj-i-áms* are given in paragraph 34 of Chapter II. They may be taken generally as saying that a daughter's or sister's son may be adopted in the absence, or with the consent, of agnates, and those which assert that he can be adopted in the presence of agnates without their consent are very few. In the Full Bench ruling in No. 50 of 1893, in which both

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the previous judicial decisions and the general principles of custom are exhaustively reviewed, and which is quoted almost *in extenso* in Chapter III, it was held that under the latter circumstances the adoption of a daughter's or sister's son is presumably invalid, and in all the subsequent cases (given in paragraph 21 of Chapter III) in which custom on this point was enquired into, it was found, with two exceptions, one in which the assent of the agnates had in fact been given, the other, a case amongst Mughals, that the presumption was correct.

Strangers.

29. The answers allowing the adoption of a stranger in blood as well as in tribe are given in paragraph 35, Chapter II. A very few Muhammadan tribes who profess to practice adoption, but who very probably do not really do so, say that any one outside the *gôt* but inside the tribe, or even any Muhammadan may be adopted. A few other tribes say that a stranger may be adopted, if there are no agnates or daughters and daughters' sons, or no suitable person of the same *gôt*. The few cases in which the adoption of a stranger has come before the Chief Court are given in paragraph 27, Chapter III, and in none of these was it found that there was any custom in favour of such adoptions.

Power of a widow to adopt.

30. The power of a widow to adopt is discussed in paragraph 36 of Chapter II and paragraph 24 of Chapter III. The answers of the different tribes vary in almost every district, some saying that she can never adopt, others that she may do so with the consent of the agnates, or with the express permission of her husband. Some even say that she may do so without such consent or permission. But in all cases they say that the person adopted must be a near agnate of the husband. Instances of adoption by a widow are extremely rare, and hardly a case has come before the Court. If there can be said to be any general custom at all on the point, I should say that it is that the widow can only adopt with the consent of the agnates.

GIFTS.

Gifts.

31. Custom as regards gifts is governed by the same general principles as in the case of adoption. It is discussed in paragraphs 37 *et seq.* of Chapter II, and paragraphs 25 *et seq.* of Chapter III. As in adoption there must be a public act, so in the case of a gift there must be delivery of possession, and the Courts have refused to recognize as valid any gift

which was not accompanied with possession, or which was intended only to take effect after death. The answers of the tribes regarding the power of gift are given very fully in paragraph 33 of Chapter II, and the judicial decisions for each district are set out in detail in paragraphs 28 to 36 of Chapter III. In paragraph 37 of the latter Chapter I have summarized the general principles which appear to me to be deducible both from the *Riwáj-i-áms* and judicial decisions as follows:—

I—A proprietor cannot distribute his estate unequally amongst his heirs;

II—Or make a gift to one agnate heir to the prejudice of another;

III—He cannot make a gift to a daughter or daughter's son, or husband, in the presence of agnates without their consent, except in a few districts where such gifts are usually allowed to be made to a daughter who, with her husband, has taken up her permanent residence with her father, or in the frontier and adjacent districts, where they are allowed to be made generally, in the absence of sons;

IV—The only gifts that can be made to strangers are small ones for a charitable or religious purpose.

Wills.

32. The power of alienation by will is utterly repugnant to all the principles of Customary Law, and is distinctly denied by nearly all the tribes; and it is clear from their answers that the few tribes who profess to recognize it (paragraph 41 of Chapter II) do not in the least understand what they are talking about. The rulings of the Chief Court on this point are explained in paragraph 38 of Chapter III; and it will be seen that the very few cases in which wills have been recognized have been very exceptional ones, and that, on the whole, the Court has made a great distinction between the power of gift by will and gift *inter vivos*.

Reversion of alienated land to the original family.

33. In paragraph 42 of Chapter II I have explained that when the male line of a person in whose favour the succession has been diverted by adoption or gift dies out, the land reverts to the agnates of the person who made the diversion. This is but a natural inference from the general principles of Tribal Law, and it is laid down in the *Riwáj-i-áms*, and has been settled law since the Full Bench decision, *Punjab Record*, No. 12 of 1892.

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Pre-emption.

34. In paragraphs 43 to 45 of Chapter II, I have stated what are the entries in the records of custom regarding pre-emption, and I have given my own opinion as to the nature of this right. It seems clear to me that it is the last means by which the natural heirs can retain ancestral property in the family, when they are unable to altogether prevent an act of alienation by the holder of the estate. It is a mere branch of the Tribal Law, and has no connection with the pre-emption of the Muhammadan Law. The subject has not yet been considered by the Chief Court as a whole; but decisions on different parts of it are given in paragraph 41 of Chapter III. It will be seen from these that, whilst the Punjab Laws Act undoubtedly intended in its clauses relating to pre-emption, to give effect to general custom, its express recognition of relationship as the foundation of the right only in villages "held on ancestral shares" has not unfrequently led to what I must regard as just claims being rejected. The wider interpretation given to the term "held on ancestral shares," the recognition of the entries in the *Wájib-ul-arz* as evidence of custom, and the meaning now attached to the words *sharkáyan shikami wa jaddi*, in the later decisions of the Court may, however, do much to remedy this in future.

General effect of the above principles.

35. The general rule established by the different principles which we have just been considering cannot be better stated than in the following words of Sir H. M. Plowden in No. 50 of 1893 and repeated in substance in No. 101 of the same year:—"It is a common feature of Customary Law throughout the Province that no individual, whether or not he has male issue, is, under ordinary circumstances, competent, by his own sole act, to prevent the devolution of ancestral land in accordance with the rules of inheritance, that is, upon his male descendants in the male line, if any, or, failing them, upon his agnate kinsmen, in order of proximity. The exercise of any power which would affect the operation of these rules to the detriment of the natural successors to ancestral land, is liable to be controlled by them, whether the act done be a partition, or a gift, or a sale or mortgage otherwise than for necessity," or—as found further on in the judgment—an adoption.

Some remarks on Customary Law generally.

36. I trust that this review of Tribal Law in the Punjab may not only be of practical use to those engaged in the administration of justice within the Province, but may also be of some interest to the student of Customary Law generally.

Our opportunities for observation are certainly unique. We have not to rely on conjecture, and the imperfect records of bygone ages, for our notions of primitive society. That society is existing to this day only just across our frontier, and within our borders there are tribes whose social condition was the same not fifty years ago, that is, within the memory of members of the tribe still living. What has happened when such tribes have been suddenly brought under an all-powerful government conducted on the principles of "modern civilization," what has happened to other tribes, whose social condition may be presumed to have been originally the same, when left to develope of themselves, and what has been their state in the earlier and in the later stages of their development, are not mere matters of presumption: they are facts to be found in official records prepared with the utmost care by men who may be regarded as experts. I only regret that it has been impossible for me to refer to the many points of interest in this social development (for which I must refer the reader to Mr. Ibbetson's admirable Census Report from which I have quoted freely), and that I have been compelled to confine myself to a single subject—that of rights in landed property. The earliest form in which we find these is that of a joint holding by the whole tribe of its entire land, with the one simple conception of individual right expressed by the Bannu tribes in the dictum that the land belongs to the fighting men of the tribe. When land thus held is suddenly not only partitioned between artificially created village communities, but is even further divided amongst the individual members of these communities, it is most natural that the first idea of the persons invested with such novel rights should be that they could do what they liked with them. We thus find the frontier tribes at first asserting an unrestricted power of sale and gift. But we find no instances of the exercise of this power; and the inconvenience of its existence, even in theory, is soon apparent. The tribesmen, therefore, agree to lay down for themselves the rule that a man can only sell his land for necessity, and only give it away to certain relatives under special circumstances. When I speak of the village communities as artificially created, I do not mean that they were created on principles opposed to custom and the natural rule of development. Communities were before our intervention in the course of formation in what I may call the normal manner and which I have described elsewhere (paragraph 10 *supra*). Groups of families

Earliest form of property in land.

Natural course of development.

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were settling down together in hamlets; the *vesh* or periodical re-distribution of the cultivated lands had ceased to be used by the tribe as a whole, and was only made applicable by each settlement or community to the portion of the tribal land considered by it as its own. The action of English officials merely hurried the partition of the waste lands of the whole tribe and the development of individual right within the community—changes which would no doubt have taken place in due time without official intervention. But had these changes been gradually worked out under the control of the "brotherhood," had the community passed through the usual stages of one joint body, then major subdivisions, followed by minor subdivisions, as was usually the case in the Eastern Punjab, the ideas of the people on the subject of property would have gradually developed also, and would not have been thrown into confusion by the sudden transition from a joint tribe to the individual as the unit of society. Whether this confusion of ideas will right itself or not must depend entirely on the Law Courts to whom the duty of deciding points of custom has now passed, and who have taken the place of the "brotherhood." If these Courts, before deciding any particular point, first endeavour to thoroughly understand the history of the tribe or community, and the fundamental principles of its customs, and if they require any practice at variance with these principles, whether asserted by a litigant in Court or in an answer in a record of custom, to be supported by precedents, they will place Customary Law in the position in which it would have been had it been left to the control of the brotherhood. If, on the other hand, they assume, either on the ground of "natural right" or on the strength of a random answer, that every man is at full liberty "to do what he likes with his own," and if they call on agnates seeking to control his action to show cases in which this power of control has been exercised, they will destroy both the Customary Law and the social and political system based upon it.

Guiding principles.

37. But, however the transition from tribal to individual right may have taken place, the basis of this right has throughout been the principle of agnatic succession. This principle rests in my opinion not on any idea of the *Patria Potestas*, but on the very simple, and to a wild people, most natural, idea enunciated by the Bannu tribes, already quoted, that the land belongs to the fighting men of the tribe, and that a woman

Agnatic succession.

is a mere animal useful for breeding and domestic purposes, or to be exchanged for a similar animal belonging to another set of males, if she cannot be used for these purposes by her own tribe. Where she is so exchanged, that is, where exogamy is practised, the principle of agnatic succession is intensified; for the effect of allowing any rights to the female would be to take the land from one tribe or clan into another; it would introduce a stranger into the village community, besides depriving the agnates of the family group of their rights of succession. Where endogamy is practised, only the last result would follow, and we find consequently in endogamous tribes, especially in those in which marriage between near relations is the custom, a tendency to acknowledge, not indeed any right in the woman herself, but a capacity in males related through her, who will usually be agnates, though not the nearest, to succeed under a special gift or act of adoption. What led a tribe to adopt exogamy or endogamy as its rule it is difficult to say. As a fact, the former is, generally speaking, the practice of all the Hindu, and the latter of the purely Muhammadan tribes. By exogamy is meant marriage outside the *gôt*, or clan of the father, mother, father's mother and, often, mother's mother, but still marriage within the tribe. By endogamy it is not meant that the marriage must, but only that it may be, within the family, the only prohibited degrees being those of the Muhammadan Law. The subject generally is discussed by Mr. Ibbetson in paragraphs 136, 357, 682 of the Census Report. Tribes who were originally Hindu, but who were converted to Islám, retain their Hindu customs, though they are compelled to admit in theory that any marriage allowed by Muhammadan Law would be valid: and it is said that at the present day there is a considerable tendency amongst them to give up the old Hindu practice of exogamy, partly because it is inconvenient and expensive, and partly because they have been to some extent affected by the Muhammadan revival which has been going on in the Eastern Punjab. Both Hindu and Muhammadan Laws have had a considerable effect on upholding tribal customs regarding marriage, but they did not originate them, for they are themselves the product of custom. For the origin of endogamy it is unnecessary to make any research: it is the most natural and convenient rule of marriage, and was no doubt the original rule. For the Hindu rule of exogamy it is more difficult to account. There are no doubt traces in the marriage customs

Endogamy and exogamy.

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of the Hindu tribes of marriage by capture. The rule which in Umballa and Karnál forbids marriage with a woman of a neighbouring, but unrelated, tribe is probably one of these; so no doubt is the custom which regulates the personal relation between the father-in-law and son-in-law, which prevents the two from speaking together, or even, if possible, from meeting, and which thus renders the idea of a "resident son-in-law" an impossibility. But although the theory of marriage by capture might account for the rule forbidding marriage within certain groups, it seems inconsistent with the equally strong rule which prescribes that the marriage must be within the tribe. Is it not possible, or even probable, that the prohibitions of both the Tribal and the regular Hindu Law owe their origin to the system of polyandry, which is depicted in the Hindu epics and which exists in the present day in most parts of the hills, and even, though not openly acknowledged, in some parts of the plains? (See Mr. Parser's Settlement Report on the Jullundur District). Polyandry, or the custom of a number of brothers having, like the Pandavas, only one wife between them, was due no doubt to the simple reason that they could not obtain or afford a wife apiece. When they became able to afford, and began to take, more than one wife between them, the custom of community still continued. At first it was openly acknowledged, now it is not so, but more than one Settlement Report hints, and many District Officers will say distinctly, and my own experience would confirm them, that a group of agricultural brothers often practically regard their wives as common property. Where this is the custom it would be difficult to say who is the father of the different children; and persons might marry who believed themselves to be only cousins, but who were really brother and sister. Restrictions as to the tribe of the woman to be married would be the natural remedy for this. But whatever may have been the origin of the custom of exogamy, its effect has certainly been, as already stated, to intensify the rule of agnatic succession.

Strength of the agnatic principle.

38. This rule may fairly be described as the sum and substance of the Tribal Law of the Punjab, as far as this law affects rights in ancestral land. The general tribal feeling still guides social customs, especially those relating to marriage; the village community still possesses, under the rule of Pre-emption, the power of excluding total strangers, and it is very doubtful

if any person who was not a member of the community himself would have a right of succession to the estate of one of its members on the mere ground of blood relationship; but it is with the agnatic kinsmen alone that the right of succeeding to an estate, or of controlling the acts of its holder for the time being, now practically rests. How great is the natural strength of the agnatic principle, even in Europe, is shown by Sir Henry Maine in his "Ancient Law" (page 151); and it is curious to observe how the feeling of the Roman lawyers in favour of the recognition of relationship through females has been shared by English officers in the Punjab. In Europe this feeling almost destroyed the old law; that it only threatened it in the Punjab is merely due to the fact that the true principles of custom have become known in time.

Codification undesirable.

39. A suggestion has been made that now that the leading principles of Tribal Law have become known, they should be embodied in a Code, and published under legislative authority. Such a course would, in my opinion, be both unnecessary and unwise. It would be unnecessary, because the decisions of the Chief Court, which may be said to have established certain principles of Customary Law, are as binding on the Subordinate Courts as an Act of the Legislature would be. It would be unwise for many reasons. It is true that we now know more about custom than we did when the Punjab Civil Code, which was long regarded as law, was issued, and that if we were to legislate now we might avoid mistakes which would have been committed if we had legislated then. But even now our knowledge is far from perfect; all we can say is that certain principles are presumably in force. I should be unwilling to say of any single principle that it is absolutely true for the whole of the Punjab. I would not even say that there may not be families, or groups of families, or even sections of tribes, in which the cardinal principle of agnatic succession is disregarded, and in which daughters take a share of an estate even in the presence of sons. It would be quite impossible, even if we had the necessary knowledge, which we have not, to embody in an Act of the Legislature, a list of the tribes and families to be excepted from its operation. To merely enact that in certain cases there was to be a certain legal presumption, would be perfectly useless as a check to litigation, and would carry us no further than we are now. It is further, I think,

CHAP. I. very undesirable, to attempt to prevent any future development of custom. I have referred to the "elasticity" of the old system of administering Customary Law by "the brotherhood"; it is an inevitable result of the transfer of the jurisdiction to regular Courts that the law should be stereotyped and its future growth checked. It is better that it should be so than that it should be destroyed by decisions contrary to its principles. But even under the present system all growth is not checked; if the feeling of the people, which is the basis of custom, turns decidedly in favour of the succession of females, or males related through them, or of freeing a proprietor from the control of his agnates, effect will be given to this feeling by successions or acts being allowed to pass unchallenged, and this may occur so often that in course of time custom itself may be changed. All this would be impossible if the Customary were to be turned into Statute Law.

CHAPTER II.

RECORDS OF TRIBAL CUSTOM.

Their general history.

1. A very complete history of the origin of the *Riwáj-i-áms*, or records of tribal custom, is given in Volumes I and II of Mr. Tupper's work on the "Customary Law of the Punjab." The first attempt to record custom was made when the records for the first regular settlements were drawn up during the period extending from 1845 to 1865. The record of rights prepared for each village contained an "administration paper," or *Wájib-ul-arz*, that is, a statement of "matters which it is proper to set forth;" and amongst these matters were the special customs of the village, or as much as was known of them.

The *Wájib-ul-arz* of the firs settlements.

Their defects.

2. This mode of recording custom was open to obvious objections. The clauses in the *Wájib-ul-arz* relating to custom were mixed up with others relating purely to matters of executive administration, the information given was very meagre, and it was repeated *verbatim* for village after village, so that it was impossible to say how far it represented the opinions of the people themselves, or was a mere invention of the officials drawing up the record. Accordingly, Mr. A. Brandreth, in preparing the records for the Jhelum District, as explained in his report of 1864, separated matters relating to custom from the rest of the *Wájib-ul-arz*, put them in the form of questions to the various tribes, or classes forming the village communities, and recorded, separately, the answers given. Apparently the record was prepared for groups of villages, though a copy of it was made for each village.

Change introduced by Mr. A. Brandreth in Jhelum.

Tribal records prepared by Mr. E. A. Prinsep in 1865.

3. By the time the first regular settlements came under revision, it had become apparent that the customs governing the people, as regards rights in land, had a tribal rather than a local origin; they were not peculiar to a particular village or locality, but were common to the whole tract occupied by

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members of the same tribe, and even for different tribes were very similar in their main features. Accordingly, in 1865 Mr. E. A. Prinsep, the Settlement Commissioner, under whom the work of revision was being carried on, obtained the sanction of Government to his proposal that in future customs should be omitted entirely from the *Wájib-ul-arz*, and be recorded according to tribes, in a separate volume or volumes for each tahsíl. This was done in all the districts which came under Mr. Prinsep and his assistants, *viz.*, Siálkot, Gujrát, Gujránwála, Lahore, Amritsar, Gurdáspur and Kángra.

Their general scope and form.

4. In the districts immediately under Mr. Prinsep himself the record consisted of a few simple questions and answers—some twenty in all—with examples and exceptions, arranged under the main heads of—

I.—The rights and powers of widows.
II.—Succession amongst sons.
III.—Rights of daughters and their sons.
IV.—Adoption.
V.—Power of disposal.

But it was left to each officer in separate charge of a district to expand or curtail the scope of his enquiry as he pleased; and we accordingly find that, whilst the record for the Lahore District contains 290 questions on subjects ranging from the smallest details of domestic life to the general system of agriculture, in Gujránwála we have nothing but the briefest note of what the Settlement Officer considers to be the custom of some of the chief tribes on a few main points.

An uniform system introduced by Mr. Tupper in 1873.

5. The necessity for some approach to uniformity, at any rate as to the scope of the enquiry, was manifest, and in 1873 Mr. Tupper, then Assistant Settlement Officer at Dera Gházi Khán, submitted a note proposing a series of questions to be used as the basis of all future enquiries. This proposal, with a few modifications, and with the reservation to Settlement Officers of the power to still further adapt the questions to local requirements, was accepted, and the questions (published in full in Volume III of "Customary Law") were circulated for general adoption, and they have formed the basis of the record of custom in each of the districts which have come under settlement since they were issued; that is to say, practically, the whole of the Punjab. The questions were arranged in the following order:—

Mr. Tupper's questions.

PART I.—QUESTIONS ON TRIBAL CUSTOM.

Section I.—Family and Tribal Connection.

1. Betrothal.
2. Marriage and divorce.
3. Guardianship and minority.
4. Succession.
5. Adoption.
6. Bastardy.
7. Wills and legacies.
8. Special property of females.
9. Gifts.
10. Partition.

PART II.—QUESTIONS ON LOCAL CUSTOM.

Section I.—Proprietary Right and Village Organization.

1. Tenures of the Punjab.
2. The Chakdári tenure.
3. Periodical re-distribution of land.
4. Inferior proprietors.
5. Village servants.
6. Rights of absent proprietors.
7. Management of common village land.
8. Partition of the same.

Section II.—Alluvion and Diluvion.

Section III.—Production.

1. Canals and hill streams.
2. Wells.
3. Manure.
4. Agricultural machinery.
5. Water collected on waste lands.

Section IV.—Transfer of Property.

1. Landlord and tenant.
2. Pre-emption.
3. Mortgages.

Mode of enquiry.

6. The mode of enquiry and the form of the record prepared is explained in full for each district by the various Settlement Officers. With the exception of a few districts, in which there was no fresh enquiry at the revised settlement, but merely a summarizing and review of the old record prepared under Mr. Prinsep, the procedure generally followed was this: Mr. Tupper's questions were first reviewed by the Settlement Officer and his assistants, including the Superintendent in

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charge of each tahsíl, and adapted to local circumstances. The headmen of each village and other leading men of the chief tribes were then collected at convenient centres; the questions were carefully explained to them, and discussed by them; their answers were recorded as given, with any instances, in support of them, or showing exceptions, that could be quoted; the village pedigree tables were carefully examined both to verify the instances quoted and to find others. There was then a final attestation, often by the Settlement Officer himself, and on doubtful points a note was added giving the opinion of the presiding officer as to what the custom really was. In addition to this, in some districts, the Settlement Officer made either a full translation, or an English summary, of the whole record, reviewing the answers at length, and stating his own opinions.

Values of the record as evidence.

7. When the question of the form of the tribal records was still under discussion, it was suggested that, instead of merely recording the questions and answers, with an occasional expression of his own opinion, the Settlement Officer should go a step further, and come to a finding himself as to what the custom really was, and that this finding alone should be entered in the final record. It was supposed that the entry thus made would acquire the legal presumption of correctness given by section 16 of the old Punjab Land Revenue Act to an entry in the record of rights. It is difficult to see how it would have been possible to frame the record in such a manner that it could be thus accepted by the Courts. Fortunately, as may be seen from the correspondence published in full in Volume I of "Customary Law," the suggestion was disapproved of at once by the higher Revenue authorities, and the attempt was never made. I say "fortunately," because the mere technical presumption given by the Act is of little practical value, and the attempt to give the records undue weight would probably have resulted in their being unduly discredited. As they stand they are legally admissible in evidence as containing the opinions on custom of persons likely to know it, and they are in practice so admitted. Being admitted, their value, like that of all other evidence, depends on themselves. The enquiries of which they embody the result are in their nature precisely the same as would be made by a Court of Justice, through a local Commissioner, in any case in which evidence as to custom had to be taken. They have

the great additional advantage that they are made *ante litem motam*, and on a more extended scale than would be possible in any particular judicial case, and that they are conducted by local Commissioners who may almost claim to be treated as experts. It may be that some of the questions relate to matters on which there is really no custom, or which are even quite beyond the comprehension of the witnesses; in some cases, too, the answers may be influenced by self-interest, or opposed to the evidence afforded by recorded examples; the Settlement Officers have themselves pointed out instances where this is so. But where the answers relate to matters well within the comprehension of the people as cases which have occurred constantly, or might occur any day, and when they are not opposed to the fundamental principles of Tribal Law, they are most valuable evidence. In any case, it may be said that they are the best evidence of the kind procurable, and that the tribal representatives whose answers have been recorded, however ignorant or prejudiced they may be, are at any rate far superior to the partizan witnesses who would be called in each case if the records did not exist.

Records existing in each district.

8. Before reviewing the statements as to custom contained in the tribal records, I will give a brief note of what the records themselves actually are in each district. I take the districts in their geographical order from the east to the west of the Punjab, omitting Simla, which has of course no record, but including Sirsa, which was a separate district when the settlements were revised.

(1). *Delhi.*—The revision of the Delhi settlement lasted from 1873 to 1880. It was commenced by Mr. O. Wood and finished by Mr. Maconachie, C.S. During its progress tribal records were prepared in vernacular. The answers were recorded in 1880 in a single volume for the whole district, but they were of course arranged according to tribes, or groups of tribes.

There is no English translation or abstract, and the only notice of the subject in the Final Settlement Report is in paragraph 206, where Mr. Maconachie says that he himself attested the answers of the Jats, Gujars, Brahmins, and two or three other tribes, and that the remainder were attested by the Extra Assistant in a manner which Mr. Maconachie believes to have been thoroughly satisfactory.

(2). *Gurgáon.*—The revision of the Gurgáon settlement was carried out by Mr. F. C. Channing, C.S., and Mr. J. Wilson, C.S., and the records of custom were prepared at various dates in 1878 and 1879 by the latter officer. They have been published in English, in a volume forming part of the "Customary Law" series, with a very complete review by Mr. Wilson and notes explaining clearly for what tribes they were prepared, and when and how they were attested. The work was done as thoroughly as any work of its kind could be done. In his general review Mr. Wilson gives a clear account of the chief tribes of the district, and he makes some excellent observations on the general nature and principles of tribal customs. He shows that there is a great similarity in the customs of all the tribes, and that these customs have, except in matters of ceremonial, no connection with either Hindu or Muhammadan Law, but are based simply on the tribal custom of exogamy, that is, marriage outside the *gôt* but within the tribe, with the natural corollary that agnates alone can succeed and that the land cannot leave the *gôt*.

(3). *Rohtak.*—The Rohtak settlement was revised by Mr. Purser, C.S., between 1874 and 1879. Records of custom were prepared in vernacular.

In the Rohtak tahsíl for		Jats, Brahmins, and Rangars.
„ Sámpla	„	Jats and Brahmins.
„ Jhajjar	„	Jats, Brahmins, Rájpúts Ahirs and Afgháns.
„ Gohána	„	Jats, Brahmins, and Afgháns.

An English abstract of these, or general note, by Maháráj Kishen, Extra Assistant Settlement Officer, is published at page 173, Volume II of the Customary Law series, but it is neither full nor clear in many parts, and Mr. Purser considers "that it cannot be relied on in doubtful points."

(4). *Hissár.*—Mr. A. Anderson commenced the revision of the Hissár settlement in 1887 and completed it in 1890. Mr. Anderson had to leave on account of ill-health before its conclusion, and the work was wound up by Mr. Fagan, C.S., who wrote the Final Report. There was no general enquiry into, or record of, tribal custom, but notes on custom were made in the *Wájib-ul-arz* of each village. From the position of Hissár, and the general description of it given in the Final Report, it may be presumed that its tribes follow the same law

as their kinsmen in the neighbouring districts of Gurgáon, Rohtak, Sirsa and Firozpur.

(5). *Sirsa.*—Mr. J. Wilson, C.S., took up the revision of the Sirsa settlement after that of Gurgáon, and the *Riwáj-i-ám* work was done in the same thorough manner as in the latter district. The vernacular records were prepared between April 1881 and September 1882, and there is an English volume by Mr. Wilson himself (published as Volume IV of the Customary Law series) to which all the remarks already made on the Gurgáon volume are equally applicable.

(6). *Firozpur.*—The Muktsar tahsíl and the Mamdot Iláqa of Firozpur were under settlement, as part of the Montgomery charge from 1868 to 1873, and their tribal records were drawn up in 1871, in the form of 40 sets of answers to questions framed by Mr. Purser, C.S., the Settlement Officer. A translation of one of the sets, with which all the others are said to practically agree, is given by Mr. Francis, C.S., in his English review of the records for the remaining tahsíls (Moga, Firozpur, and Zírah) published as Volume VII of the Customary Law series.

These last records were prepared under the immediate superintendence of Mr. Francis, the Settlement Officer, in the summer of 1889, and he says that owing to the great similarity in the customs of all the tribes it was easy to combine all the answers in a single statement. Of this he has given a translation, or abstract, and a very full review. In his general remarks he explains the origin and localization of the chief tribes of the district. They are mainly Jats, Hindu or Muhammadan, descended from a common original stock, and holding their villages in compact blocks. One tribe, the Barárs, is said to occupy over 1,000 square miles without a break. All the Hindu Jats are strictly exogamous, as in Gurgáon and Sirsa, and the Muhammadan Jats are equally so in practice, although they are bound to admit the validity of any marriage which would be valid by Muhammadan Law. Amongst all the tribes, Mr. Francis says, there is the strongest feeling that the land, however acquired, cannot leave the *gôt*, and that relations through females can never take it, either by inheritance or adoption, or gift.

(7). *Umballa.*—The Umballa District was, for the purpose of revising its settlement, divided into two charges under

CHAP. II. Mr. J. M. Douie, C.S., and Mr. A. Kensington, C.S., but both these officers co-operated in compiling a record of custom for the whole district. Vernacular records were prepared, one for each important tribe in each of the six tahsíls, and they fill 37 volumes. Their final attestation took place in March 1889, and the English summary and review prepared by Mr. Kensington (Volume X, "Customary Law") shows how this, and the enquiry generally, was carried out. Mr. Kensington gives a brief description of the origin and localities of the agricultural population, which consists chiefly of Jats, split up into innumerable *gôts*, Rájpúts, and Gujars. The report on the Customary Law of the Ludhiána District, by Mr. T. G. Walker, C.S. (Volume V, "Customary Law") is referred to as the model on which the Umballa records were prepared and as a guide both on general principles and on doubtful points of tribal custom.

(8). *Karnál.*—Mr. Ibbetson, C.S., revised the settlement of the Pánipat tahsíl and the Karnál Parganah of the Karnál tahsíl between 1872 to 1880. Tribal records were prepared in vernacular on the basis of Mr. Tupper's questions, the answers of the different tribes being given side by side. The record is divided into three parts (1) for Hindús and Muhammadans who were originally Hindús; (2) for original Muhammadans; (3) instances (including judicial decisions). No English abstract was prepared, but Mr. Ibbetson in paragraph 629 of his Final Report states that he went over all the answers very carefully, and noted his opinion where necessary. He has also under the various sub-heads of his Final Report noticed the principal customs connected with each. At page 72 *et seq.*, he gives a very full account of the various tribes, their local distribution, and the constitution of the village communities. The country as a whole is distributed amongst well marked tribes, of whom the Jats, Rájpúts and Gujars, Rors and Brahmins are the chief. They are all exogamous as in Gurgáon, that is, a man cannot marry a woman of his own *gôt*, or other nearly connected *gôt* (the details of the prohibited degrees are given by Mr. Ibbetson, paragraph 189), but must marry within his tribe. The village communities are strong—few of them consist solely of the descendants of a single common ancestor—but most of them have been formed by tribal distribution or colonization by groups of families of one *gôt*, and are held by their descendants, with any strangers that may have been absorbed into the families.

For the Kaithal tahsíl and the Indri Parganah of the Karnál tahsíl, Mr. J. M. Douie, C.S., prepared in 1889 the following records: For Kaithal,—Rájpúts, Gujars, Jats, Rors, and Rains. For Indri,—Rájpúts, Rors, and Rains. Mr. Douie's English abstract and review form Volume VIII of the Customary Law series. He says that the Jats are chiefly Hindús, and that the Sikhs are a foreign element. But amongst all tribes the feeling in favour of keeping together the family and the village is very strong, and is the foundation of all custom.

(9). *Ludhiána.*—In paragraphs 70 to 75 of his English abstract and review (Volume V, "Customary Law") Mr. T. G. Walker fully explains how the records were prepared for the Ludhiána district. Mr. Tupper's questions formed the basis of the enquiry which was a most thorough one, and the answers are contained in 34 codes, a separate code being prepared for the most important tribes in each of the four tahsíls. Mr. Walker's review of these codes, and report on custom generally, is unusually full and interesting. He gives the following division of the agricultural population:—

	Per cent.
Jats (Hindús)	62 ...
Do. (Muhammadans)	4 ... 66
Rájpúts (Muhammadans)	... 10
Gujars (do.)	... 7
Arains	... 3
Others	... 14

A very full account is given of each of the leading tribes and of the constitution of the village communities. Very few villages are entirely held by the descendants of a single common ancestor, but most are held by the descendants of two or more Jats, sometimes of different *gôts*, who joined in founding the village. The customs of all the Jats are practically the same. A man may not marry a wife of (1) his own, (2) his mother's, (3) his father's mother's, (4) his mother's mother's *gôt*. The feeling is very strong against allowing a proprietor to alienate land, whether ancestral or acquired, for his own benefit, or to alter the natural course of succession by adoption or gifts even when these are made for the benefit of agnates. They are never allowed to be made for the benefit of non-agnates. In paragraph 73 Mr. Walker makes some very apposite remarks as to the manner in which Courts should deal with questions of custom, pointing out, like Mr. Wilson in the Gurgáon and Sirsa

Reports, that what they have to do is to understand and apply the fundamental principles on which the custom is based, and not merely to search for exact precedents.

(10). *Jullundur.*—The revision of the Jullundur settlement was completed by Mr. Purser, C.S., in 1885. A single record was prepared in vernacular for each of the four tahsíls, giving the customs of the Jats (Hindu and Muhammadan), Rájpúts (Hindu and Muhammadan), Arains, Awáns, Dogars, Gujars, Mahtons, miscellaneous Hindús and miscellaneous Muhammadans. In paragraph 6, page 180 of his Final Report, Mr. Purser says that the subject is not mentioned further as a separate Note will have to be written for the "Customary Law" series. This, however, has not yet been done. But a full account of the various tribes of the district is given at pages 73 *et seq.* of the Final Report, which shows that more than half the villages are owned either wholly or in part by various tribes of Jats, and that the great majority of these are Hindús or Sikhs.

(11). *Hoshiárpur.*—The revision of the Hoshiárpur settlement was carried out by Captain Montgo mery between 1879 and 1885. At pages 50 *et seq.* of his Final Report he gives a full account of the tribes and village communities. The latter are for the most part composed of members of well known tribes, the descendants of a common ancestor, though but few villages are now held in common, or even on ancestral shares. In the Una tahsíl and the Hill tracts generally the villages are owned almost solely by Brahmins, Hindu Rájpúts and their offshoot, the Kanets, with here and there a few Gujars. In the plains the proprietary bodies are chiefly Jats (mostly Hindu) with a fair number of Rájpúts, both Hindu and Muhammadan, and some Gujars, also Hindu and Muhammadan. Exogamy, in the sense explained previously, is the general tribal rule.

For the Una tahsíl and Hill tracts the records of tribal custom were prepared by myself, when that part of the district was under settlement for a revision of records only; in 1872 a separate record was prepared for each of the 21 talukás, or old local sub-divisions, and in each the answers of each tribe were recorded separately, but they are in the main the same for the tribe as a whole throughout the tahsíl, though there are some local differences.

For the rest of the district the records were prepared by Captain Montgomery in vernacular in 1884. A single joint

record was made for the three tahsíls of Hoshiárpur, Garhshankar, and Dasúah, in which the answers were grouped according to tribes. The English Note referred to in paragraph 168 of his Final Report has not yet been written.

(12). *Kángra.*—Except in the Núrpur tahsíl, where custom is generally the same as in the neighbouring districts in the plains, the Kángra District has customs peculiarly its own. A general account of these is given in the very interesting reports by Mr. Barnes, C.S., on the first regular settlement, and by Mr. (now Sir J. B.) Lyall, C.S., on the revised settlement of 1868-72. At the latter settlement records of tribal custom were prepared in vernacular for each of the tahsíls—(1) Kángra, (2) Núrpur, (3) Dehra, (4) Hamírpur, (5) Kulu and Plách. The questions were drawn up by Mr. Lyall, and the answers were recorded in separate columns for (1) Brahmins, Khatrís, &c.; (2) Rájpúts and Thákurs who observe the *pardah* and do not allow widow marriage; (3) Ráthis and Thákurs who do not observe the *pardah* and allow widow marriage; (4) Gírths, Jats and similar tribes; (5) Gosháins, Bairágís and Saniásís; (6) Dúmnás, Chumárs, &c.; (7) Aráins and miscellaneous Muhammadans; a separate record was also made for *Báshindagán Barfáni-dhár*, or residents of the Himaláyás. No special record was made for Lahoul, Spiti, and Ladákh, but the customs of these regions are fully noticed by Mr. Lyall in his general Report.

At the recent revision of the Kángra settlement by Mr. E. O'Brien, C.S., the question of tribal custom was not touched, but he prepared, though he did not complete, a Note on the ethnology of the "Gaddis" and "Gírths" and their rules of succession to property.

(13). *Gurdáspur.*—The first *Riwáj-i-ám* was prepared by Rái Gopal Dás, Extra Assistant Settlement Officer, under Mr. Prinsep in 1863-65. The questions put to the tribes were 19 in number, grouped under the following heads:—

I.—Rights of the widow	2	questions.
II.—Succession by inheritance	6	do.
III.—Rights of daughters and their children	6	do.
IV.—Adoption	5	do.

The whole record is contained in a single volume of 450 pages.

CHAP. II. Page 2 of Mr. L. W. Dane's English abstract and review gives a list of the tribes whose answers were recorded. Mr. Dane considers that, as far as its scope extended, the enquiry was satisfactory and fairly complete. Consequently in revising the settlement in 1886-92 he compiled no new records. But a synopsis was made of Mr. Tupper's questions and circulated to the Settlement Superintendents with instructions (1) to see how far they were answered by the old record; (2) to enquire from the chief tribes how far the old answers were correct; (3) to record answers and alleged instances where the old answers were alleged to be incorrect, or where they were silent.

Mr. Dane's abstract and review of the record thus revised forms Volume XII of the Customary Law series.

(14). *Amritsar.*—The circumstances of Amritsar are much the same as those of Gurdáspur. In both districts the land is held by village communities formed by members of well-known tribes, mainly Jats, and the majority of them Hindús or Sikhs. In 1865 Agha Kalb Abid, Extra Assistant Settlement Officer under Mr. Prinsep, recorded the answers, in Volume I of 26 *gôts* of Jats, in Volume II of 27 *gôts* of Jats, in Volume III of "other tribes," to a set of questions similar to those put in Gurdáspur. The record included the Raya tahsíl, then a part of Amritsar, but since transferred to Siálkot. At the revision of the settlement in 1892 no new record of custom was prepared, nor was there even, as in Gurdáspur, any attempt to verify or complete the old one. Only an English abstract and review of the latter (Volume XI, Customary Law) was prepared by Mr. J. A. Grant, C.S., the Settlement Officer, who has carefully reviewed the answers under each sub-head, and he remarks generally that, whilst the Muhammadan Jats, usually follow the same custom as the Hindu and Sikh Jats, who own nearly four-fifths of the land, amongst miscellaneous Muhammadans there is a tendency to show indulgence to daughters and their issue, which may perhaps be due to the influence of Muhammadan Law. Mr. Grant considers that the old record was carefully prepared, and correctly expresses the opinions of the people, but that its usefulness is somewhat impaired by the profusion of examples and exceptions.

(15). *Lahore.*—As already stated, the first record of custom prepared by Mr. Leslie Saunders, Settlement Officer, in about

1868, consisted of one huge volume, containing the answers to 290 questions. It was divided into the following parts:—

Part	I.—Relating to the history of the tribe, and domestic matters, such as ceremonies at births, &c. ...	Q. & A.	1 to 70
	II.—Matters relating to the internal organization of the village ...	„	71 to 124
	III.—Inheritance, adoption and alienation	„	125 to 161
	IV.—Agriculture in general	„	162 to 290

Thus Part III, the smallest of the whole, alone deals with questions of real tribal custom.

At the revision of the settlement in 1892-93, Mr. G. C. Walker, C.S., prepared an entirely new record on the basis of Mr. Tupper's questions. As in Amritsar and Gurdáspur, the Jats, mostly Hindu, form the bulk of the landowners, but there are also a fair number of Rájpúts, Aráins, and Dogars. Only these four tribes are included in the new record. Mr. Walker says that the answers are often meagre, and, except on broad points, where custom is already well known, they often represent custom not actually established, but as the people think it should be. But they are still valuable as recording the opinions of all the leading men likely to know anything about custom, and they are given disinterestedly.

(16). *Siálkot.*—The great majority of the villages are held by Jats and Rájpúts, a fair number are held by Awáns, and a few are held by Aráins. A very full account of the history of the various *gôts* with details of their holdings is given in the history of the Siálkot District, compiled in 1865 by Rái Amín Chand, Extra Assistant Settlement Officer under Mr. Prinsep, and translated by myself in 1867-68. This history also contains the first record of tribal custom prepared for the district. Meetings of the leading men of the chief tribes were held in the usual manner and their questions and answers were recorded and from them one record was prepared for the whole district. So far as they relate to general tribal customs they were framed thus:—

Part	I.—Power of a widow over property	Questions	1 to 5
	II.—Division of property amongst sons	„	6 to 11
	III.—Rights of daughters and their sons	„	12 to 18
	IV.—Power of adoption	„	19 to 23
	V.—Power of alienation	Question	24

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Rái Amín Chand remarks on the record generally with much truth: "Instances may be found where in former times, the custom, as here laid down, has not been observed, but these instances cannot be considered to disprove the custom. Under the Sikhs the Government demand was unlimited, and consequently property in land was little valued. Thus we find cases of daughter's sons succeeding to an estate, and in some villages proprietors are met with who have no connection with the rest of the community. But these cases are rare and cannot be held to prove anything."

Captain Dunlop Smith was appointed in October 1887 to revise the settlement of 1865. In paragraph 136 of his Final Report (dated 30th March 1895) he refers to the enquiry by Rái Amín Chand in 1865, and says:—"During this settlement (1887-95) the statements of the leading tribes regarding the customs which regulate their social relations have been taken by M. Ghulám Ahmad Khán." A volume embodying the result has been edited by the Settlement Officer for publication in the Customary Law series. But it has not yet been published, and I have not been able to obtain a copy of it. *It would seem from its title that it will not cover the same ground as Rái Amín Chand's Code, but if it does, the two volumes will both have to be consulted on questions of custom. My references in this work are to Rái Amín Chand's Code only.

(17). *Gujrát.*—The enquiry into tribal custom in Gujrát was carried out by Mirza Azim Beg, Extra Assistant Settlement Officer under Mr. Prinsep, on the same lines as the enquiry in Siálkot. The questions were 22 in number, and one record was prepared for each tahsíl in which the answers of the various tribes were grouped in the following manner:—

Tahsíl Gujrát—

i. Muhammadan Jats—(1) Waraichs; (2) fifty-seven other *gôts.*

ii. Muhammadan Gujars—(1) Kathána Chauháns, and Cheehís; (2) thirty-four other *gôts.*

iii. Muhammadan Rájpúts (Khokars, Bhattís, Minhás, Janjuahs, Bháos).

iv. Other Muhammadans—Awáns, Aráins, Koreshís, Moghals, Patháns, Shekhs, Kakázaís, Lohárs, Tarkháns and Faqírs.

* This has since been published as Volume XIV of the "Customary Law Series." Apparently it does cover the same ground as Amín Chand's book, although it is based on a fresh enquiry made during the recent settlement.

v. Hindús—(1) Brahmins and Khatrís; (2) Bairúpiás, Labánás; (3) Arorás, Khatris and Zargars; (4) religious sects.

Tahsíl Khárián—

i. Muhammadan Gujars—(1) Cheehís, Chauháns, Kathánás Kalas; (2) other Gujars, forty-seven *gôts.*

ii. Muhammadan Jats—fifty-four *gôts.*

iii. Muhammadan Rájpúts—Chibh, Khokar, Bhatti, Minhás.

iv. Awáns.

v. Other Muhammadans—details as in Gujrát.

vi. Hindús—details as in Gujrát.

Tahsíl Phálián—

i. Muhammadan Jats—(1) Tarar, Gondol, Ránja; (2) thirty other *gôts.*

ii. Muhammadan Gujars—seven *gôts.*

iii. Muhammadan Rájpúts—Khokars and Bhattís.

iv. Other Muhammadans—as in Gujrát, but including Awáns.

v. Hindús—(1) Brahmins, Khatrís, Arorás; (2) Bairúpiás and Labánás; (3) Zargars and Bhátiás; (4) religious sects.

At the revised settlement in 1891-92 there was no fresh enquiry or attestation of the old record. But Captain Davies, the Settlement Officer, made an English abstract (Volume IX, Customary Law) and reviewed the answers in detail, adding occasionally his own opinion on the point in question, and giving all the known judicial decisions bearing on it.

In his general remarks, he observes that the Hindús generally follow the same customs as in other parts of the Province; but that the Labánás, the only large landowning class amongst them, approach more nearly to the Muhammadans, who all follow very much the same customs.

(18). *Gujránwála.*—A separate vernacular record was prepared for each of the three tahsíls of Gujránwála, Wazírabad and Háfizabad by Mr. O'Dwyer during the revision of settlement just completed.

The answers of the different tribes, or groups of tribes, are shown in separate columns. As already observed, Captain Nisbet's notes on the records, prepared by him, are very meagre,

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and no English summary or review has yet been prepared by Mr. O'Dwyer, but the one given in the appendix has been made by me from extracts from Mr. O'Dwyer's vernacular records.

(19). *Montgomery.*—In Montgomery the chief tribes are the Kharrals and Káthiás and Siáls, who are found along the banks of the Rávi, and claim a Rájpút origin, and the Wattús and Joyahs, who are found on the Sutlej. The centre of the district or "Bar" is little more than a desert, except where canals have penetrated.

A *Riwáj-i-ám* was prepared for each tahsíl in vernacular during the revision of the settlement in 1870-72. No English translation, or abstract of it, has been made; but Mr. Furser, the Settlement Officer, notices the subject in his Final Report. He says that the record must be received with caution; he found that the questions were often not fully understood, and that in some instances even wrong terms were used in them; the people were often ready to answer "yes" or "no" on points on which there was really no custom; *e. g.*, adoption, which is very rare, or on which custom is very doubtful, *e. g.*, the circumstances under which gifts can be made to daughters, or at what degrees agnates exclude, or cease to exclude them from succession. But, even after making full allowance for all this, Mr. Purser considers the record of undoubted value as correctly representing the general opinions of the people.

(20). *Jhang.*—The great majority of the Jhang villages, where these are held by village communities, belong to the Siáls. A full account of this tribe, and of the district generally, is given in his Final Report by Mr. E. B. Steedman, C.S., who, with Mr. (now Sir Frederick) Fryer, C.S., conducted the revision of the settlement in 1874-80. There are also many families of Sayads holding considerable tracts. Mr. Steedman found the customs throughout the district so much alike that only a single record was prepared in vernacular for the whole. No English translation or abstract of this has been made, and, in noticing the subject in his Final Report (paragraph 245), Mr. Steedman merely observes that too much reliance must not be placed on the record, and that he has recorded his own opinion in it where this seemed necessary.

(21). *Multan.*—The general features of Multan resemble those of Montgomery and Jhang. The northern part of the

district is occupied by the Siáls as in Jhang. Along the banks of the Chenáb and Sutlej there are fairly strong and homogeneous village communities of various Jat *gôts*, and several villages are held by Sayads. But the centre of the district is merely a continuation of the Montgomery Bár, and the villages in it are, generally speaking, mere collections of wells, formed for the purposes of revenue administration. During the revision of the settlement from 1873 to 1880, a record of tribal custom was prepared for each of the five tahsíls, and I myself, as Settlement Officer, fully translated and reviewed this. My work has been published in connection with the Customary Law series, but is not numbered as one of its volumes. In my review I remarked that, although the assertion of various tribes or families that they followed Muhammadan Law could not be accepted as true, yet the principles of that law had undoubtedly influenced custom, so as to make the rights of daughters and the power of gift more extensive than in other parts of the Punjab. This, I thought, might be attributed to the existence of a separate Muhammadan dynasty at Multan down to comparatively recent times (A. D. 1818), and the generally lax constitution of the villages.

(22). *Muzaffargarh.*—The revision of the Muzaffargarh settlement proceeded, under Mr. E. O'Brien, C. S., simultaneously with that of Multan. As regards tribes (of which Mr. O'Brien gives a full account in his Final Report History and Custom), there is a strong similarity between the two districts. Both formed part of the old Muhammadan kingdom, and speak the same dialect. In paragraph 16, page 107 of his Final Report, Mr. O'Brien says that a *Riwáj-i-ám* had been prepared for each tahsíl (Muzaffargarh, Sanáwán and Alípur), but no translation or review of this has ever been published, nor is the subject mentioned further in the Final Report.

(23). *Jhelum.*—Returning northward, we find the country between the Jhelum and Indus, to the north of Jhang, divided into the Jhelum, Ráwalpindi and Shahpur districts, all much alike as to population and history. I have already explained how Mr. A. Brandreth made the first attempt to record general custom when he carried on the Jhelum settlement. In the specimen of the record, prepared by him, attached to his Final Report, the tribes whose answers are recorded are the Janjuahs, Khatrís, Brahmins, and Awáns. The principles laid down are

CHAP. II. (1) that a daughter cannot succeed in the presence of near agnates; (2) that if a widow gets into difficulties and has to raise money, she should hand the land over to the agnates; (3) that the *khánádamád*, or *gharjawái*, as such has no right; he can only succeed under a special gift.

Mr. Brandreth's settlement was revised between 1874 and 1880 by the late Colonel Wace who commenced, and Mr. R. G. Thomson, C.S., who finished the work, and wrote the Final Report. Records of tribal custom were prepared in vernacular under the name of *Riwájámahs*, and copies of the principal clauses of these were placed with the record of rights of each village, not to form part of the record, but only for facility of reference. The subjects treated of are:—

I.—Inheritance amongst sons.
II.—Rights of daughters.
III.—Rights of widows.
IV.—Adoption.
V.—Gifts and wills.
VI.—Marriage and divorce.

No separate English volume has been prepared, but Mr. Thomson reviews the record very fully in paragraphs 218 *et seq.* of the Final Report. He considers the record generally accurate; but it should not be too implicitly relied on in particular cases, as "most customs in Jhelum are subject to variations which have not been recorded." He summarizes, and gives his opinion on the answers under each head, and in paragraph 230 notices special customs peculiar to certain families. His account of the chief tribes and their distribution in the earlier part of his report is very full and complete.

(24). *Ráwalpindi.*—The first regular settlement was made by Major Cracroft, and reported in 1864. Customs were as usual recorded in the *Wájib-ul-arz*, and the points noticed by the Settlement Officer are that daughters are excluded from the succession by any agnate, but that in some endogamous tribes there is a custom of giving daughters land in dower.

The revision of the settlement was completed by Mr. F. A. Robertson, C.S., in 1885. He observes of the district generally that 87 per cent. of the population is Muhammadan, and that of the 13 per cent. Hindús, the great number are priests or

traders; there are no Hindu tribes of any importance. The Muhammadans are nearly all converted Hindús (the claim of the Ghakkars to a Muhammadan origin is considered very doubtful), and with the exception of the numerous groups classed as Rájpúts, they are divided into well-marked tribes. But the holdings of the various tribes are not compact, and custom is tribal rather than local. The Settlement Officer says that, except amongst the hill tribes, the growth, or maintenance in its integrity, of custom has been much interfered with by (1) the general anarchy which prevailed before British rule; (2) the ascendancy in the different tribes of chiefs or leading men who have overridden custom. Even at the present enquiry it was often difficult to say how far the answers were truly statements of custom, or merely the expressions of the views of interested individuals. The Settlement Officer has, therefore, freely recorded his own opinion, both in the record itself, and in the translation and review (Volume VI of the Customary Law series); and this opinion is entitled to much weight. In no single instance was Muhammadan Law said to be followed.

(25). *Shahpur.*—The first settlement was made by Captain (now Sir William) Davies and Mr. Gore-Ouseley, C.S., in 1866. In the *Wájib-ul-arz,* the only record made of custom, there were certain "rules of succession," but these were to a great extent framed by the Settlement Officer himself. In the Final Report Captain Davies says that the general feeling is very strong against the succession of daughters or their sons or husbands, whose claims he himself considers to be "in accordance with natural justice," and in suits by agnates to contest such claims "it was only by a resort to arbitration that any portion of the estate could be secured to the son-in-law." Attempts by widows to transfer an estate to him by gift were, however, invariably disallowed as opposed to local custom.

The revision of the settlement of 1866 is still in progress under Mr. J. Wilson, C.S. No doubt a volume on Customary Law will be prepared with the same excellence as in Gurgáon and Sirsa. But the answers to the different questions will not even be attested until Mr. Wilson's return from furlough in November next. It is therefore impossible to review the Customary Law as a whole; but I have obtained copies of the rough answers on the more important points, and have noted them under the proper heads. Apparently a single record is being

CHAP. II. prepared for the whole district, with the answers grouped according to tribes under each question.

(26). *Hazára.*—There has been only one settlement of Hazára, the one made by the late Colonel (then Captain) Wace, in 1868-74. The information necessary for the compilation of the record of custom was first obtained in the form of answers to questions framed by Captain Wace; but the record itself was drawn up in the form of a statement of the custom of each tribe after checking the answers by a reference to the village pedigree tables, and noting the Settlement Officer's own opinion. A vernacular summary of the record is contained in a book published under the title of "Tawáríkh-i-Hazára." There is no separate English abstract or review; but the subject is dealt with very fully in Captain Wace's Final Report. The chief points noticed by him are:—

I.—Dower is always formally fixed, and occasionally it nominally includes land. But the claim is almost always settled by the husband, on taking his wife home, giving her some small present of moveable property, on which the wife remits the balance of her dower. Where, however, land is given, it becomes the absolute property of the wife.

II.—Wills are quite unknown; but gifts of small plots of land are sometimes, though rarely, made to daughters.

III.—Adoption is practically unknown amongst Muhammadans.

IV.—Daughters are excluded by all agnates; but un[illegible] married daughters, when there are no s[illegible]ons, succeed on a widow's tenure, till marriage.

V.—Sales are very rare, and regarded as dishono[illegible]ma[illegible]urable.

VI.—A father may make an unequal distributio[illegible]re[illegible]ced [illegible] of his estate amongst his sons; but it must be a c[illegible]om complete and final one "and not greatly at varia[illegible] tribnce with the proper shares."

(27). *Peshávar.*—With the exception of a few Hind[illegible]dús in the *Qasbah,* and in the villages of Pir Saháq and Kund,[illegible] the landowning population is entirely Muhammadan, divided [illegible] for the most part into well known tribes of purely Muhammad[illegible]n origin. The enquiries into tribal custom were made in 18[illegible]72

on questions framed by the late Colonel E. G. Hastings, Settlement Officer, relating to the following points :—

I.—Rights and powers of widows.
II.—Succession amongst sons.
III.—Rights of daughters.
IV.—Adoption.
V.—Alienation.

The questions were first circulated amongst the leading men of the various tribes ; then meetings were held for each tahsíl, and the answers recorded both as to what the custom really was, and what the people wished it to be in future. Examples and exceptions were called for and the village pedigree tables searched for them. As in Hazára, a vernacular summary of the record has been published under the title of "Tawáríkh-i-Peshâwar," and although there is no separate English volume the subject has been very fully noticed by Colonel Hastings in his Final Report. He observes that many of the tribes assert that they follow Muhammadan Law, although this assertion is entirely opposed to the most patent facts. The main points noted as regards custom are—

I.—That the widow is *never* allowed to take the estate, or any portion of it, absolutely. She is said by some tribes to have the power to sell her theoretical share for certain necessary purposes (*e.g.*, a pilgrimage), but no instance can be given of her doing so. The general custom is for her to take (of course only in the absence of sons) the whole estate on a life interest, but some tribes would allow her maintenance only.

II.—Sons succeed equally, except in Yusafzai, where the *chundavand* rule prevails.

III.—Daughters cannot succeed as heirs, and, in the villages which say they follow Muhammadan Law, the instances given of their doing so are really instances of voluntary gifts by brothers. But it is universally admitted, except in Tappah Razzar, where daughters are allowed under no circumstances to take land, that a father may gift land to his daughter; and such gifts as dower are not unusual. Without a gift neither a daughter nor her husband or her sons can succeed. The people wish to make a written gift

necessary in future. On the daughter's male issue dying out the land reverts to her father's agnates.

IV.—Adoption is practically unknown.

V.—Except in Tappah Razzar, a proprietor may, it is said, do what he pleases with his land, and distribute it as he likes amongst his heirs.

Colonel Hastings' settlement is now being revised by Mr. L. W. Dane, C.S., but the part of his work relating to tribal custom will not be completed in time for the result to be used in this review. But he has told me that he has noticed constantly the point already noticed by Colonel Hastings, *viz.*, the persistency with which certain tribes assert, in spite of all facts, that they follow Muhammadan Law. His explanation of this is simple and no doubt true; the people are absolutely ignorant of what the Muhammadan law really is, and the influence of the *mullahs* prevents them from asserting that they follow any other rule. This is probably true throughout the Punjab.

(28). *Kohát.*—The settlement of the Kohát District was commenced under the late Colonel Hastings in 1875 and finished in 1882 by Mr. Tucker, C.S., who wrote the Final Report. The district may be said to be held entirely by distinct tribes of purely Muhammadan origin, and the foundation of right in the villages is tribal distribution. Mr. Tucker in paragraphs 389 and 390 of his Report says that each village has a separate statement showing its customs with regard to inheritance, &c., and that a single general statement has been prepared for the whole district giving the general customs regarding—

I.—Inheritance, &c.;

II.—*Veshs* or periodical redistribution of land;

III.—Alluvion and diluvion;

and other information with regard to the district generally. Mr. Tucker makes no further remarks on the subject.

(29). *Bannu.*—The *Riwáj-i-ám* was prepared by Mr. Thorburn, C.S., and in the Final Report (there is no separate volume in English) he rejoices that there had been no previous attempt to record custom. There could hardly be said to have been any at annexation; but there was a strong feeling that women were mere chattels and could have no rights to inherit, and that even only the capable fighting men of the clan had a right to

the land. Asked for their rule of law, the tribes would reply "the Shara" without the least idea of what it was, *e.g.*, they would assert a full power in a proprietor to give away his land to whom he pleased, but could produce no instance of his having given away even a part of it.

Custom was, however, growing up, founded on decisions of the Courts, based rather on equity and good conscience than on proved custom, and it had already become a general custom for widows to inherit on a life interest.

The customs were recorded, in 1875, in a narrative form, based on answers in one code for each tahsíl, the answers of the most important tribes being taken first, then others. The Settlement Officer admits that the answers often represent rather an opinion as to what should be the custom than custom proved by precedents, and that he in some instances had a good deal to do with "moulding" this opinion.

His report gives a very full summary of the record, and the conclusions arrived at are noted under their proper heads.

The general scope of his enquiries on questions framed by himself covered—I. Rights of widows; II. Inheritance; III. Partition; IV. Power over property; V. Miscellaneous.

(30). *Dera Ismáil Khán.*—The Record of Tribal Custom was prepared, for the first time, by Mr. Tucker, C.S., about 1875. For the Muhammadans, one record was prepared for each tahsíl; for the Hindús, one for the whole district. The Settlement Officer says: "There are many points on which there is no clearly defined custom; and in many casesit is a matter of doubt how far the custom as recorded by the people should be accepted." The Extra Assistant Settlement Officer has recorded his opinion in these cases. The Hindu customs generally are said to be the same as in other parts of the Province.

Amongst Muhammadans, the only tribes who profess to follow the Shara in the matter of inheritance are the Bábars, Khetrans, Bilúchís of Parimála and a few Sayads, though families professing to follow it are found all over the district; and even the tribes who profess to follow the Muhammadan Law evade it in practice, *e.g.*, a daughter on marriage is supposed to renounce her share, or reciprocal marriages are made, each side renouncing all claims through their wives; mothers are maintained by the sons, and never take a share; provision is made

CHAP. II. for the sons of a son who predeceased his father. The Khetrans refuse a share to a wife of another tribe and to a Khetran woman who marries into another tribe.

By Customary Law, a widow, when there are no sons, succeeds on a life interest, (she cannot alienate, even for necessity, without first applying to the agnates), and she loses her right on re-marriage, unless this is to a near agnate, in which case she retains the property and is succeeded by her husband. She is also allowed to practically adopt a near agnate, *i.e.*, to take him to manage the property and succeed to it.

Any agnate who can trace his descent from an ancestor common to himself and deceased, excludes daughters and widows from anything more than a life interest. But the Settlement Officer thinks that there is really no custom in favour of agnates beyond the descendants of a common great-grandfather, and the people of the Dera, Bhakkar and Leiah tahsíls have agreed to this limit for the future. But it has not been agreed to in Tánk or by the Gundapur and other Pathán tribes of Kuláchi.

The full blood excludes the half blood.

The " right of representation " is fully recognized.

Daughters inherit only as already stated. But where there are no sons, an unmarried daughter succeeds as a widow. Where a daughter *inherits* her right becomes absolute.

The people generally have recorded that a proprietor cannot sell his land except for necessity, but the Settlement Officer says that the free right of a man to sell his own land to any one he pleases has never to his knowledge been questioned.

The people generally say that a man may, during his life-time, distribute his property amongst his heirs as he pleases, but the people of Tánk deny this.

A distribution by will would be upheld if " substantially just," but not otherwise.*

Gifts to a daughter or son-in-law accompanied by posses sion are recognized even when there are sons, and a gift to a stranger would not be set aside except on special grounds.

* See Chief Court judgment in Civil Appeal No. 366 of 1893 quoted in Part III.

If a sonless proprietor takes a son-in-law to live with him and publicly proclaims him his heir, the latter will succeed even without a gift. Property gifted to a daughter or her husband passes in default of lineal descendants, in the opinion of the people, to the daughter's father's family, but the Settlement Officer thinks that it would pass to the husband's family.

(31). *Dera Gházi Khán.*—The district was settled by Mr. (now Sir Frederick) Fryer, C.S., with Mr. Tupper, C.S., as his assistant, and the Final Report was written in 1875. Four general volumes of Tribal Customs were prepared, one for each of the four tahsíls, with separate volumes (1) for the Lúnd, Leghárí and Khosa tribes; (2) for the Biloch tribes of the Jámpur tahsíl. The answers were generally attested by Messrs. Fryer or Tupper personally. The note on the subject in the Final Report is written by Mr. Tupper. The general features noticed are (1) the absence of village communities; (2) the origin of title by (*a*) tribal distribution, or (*b*) personal acquisition, (*c*) the *vesh*. There is a very full account of landlord and tenant law, of the acquisition of proprietary rights and of mutual rights. The special remarks refer only to the general codes of *Customary* Law and exclude the tribes, said to be numerous, who profess to follow Muhammadan Law. The right of representation is not admitted by some of the Muhammadan tribes, but Mr. Tupper says this statement should be received with caution, and is not borne out by instances.

Daughters generally do not inherit, but they get their legal shares, even when there are sons, amongst the Sayads of Dera Gházi Khán and the Makwál, Malan, Vandata and three other Jat tribes.

The *khánádámád* is nowhere recognized.

The daughter is excluded—

I.—By the male descendants of a great-grandfather amongst the Hindús of Sangarh.

II.—By the male descendants of a grandfather among the Bilúchís of Rájanpur and Jámpur.

III.—By brothers and their sons among other Bilúchís.

IV.—Only by sons and their male descendants among the Muhammadans of Dera Gházi Khán.

There is usually no distinction between the whole and half

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blood. A father may distribute his property amongst his sons unequally; but, according to the Sangarh tribes, he cannot completely disinherit them. If he has no sons, he has a full power of gift, at any rate to daughters and their husbands or sons.

In pre-emption regard is paid to relationship.

On what points answers in the *Riwáj-i-áms* will be reviewed.

9. Mr. Tupper's questions, which form the basis of the greater part of these *Riwáj-i-áms*, have already been set forth in full. I do not propose to review any of the answers on the points contained in Part II, "Questions on Local Customs," except those relating to pre-emption, which I regard rather as a tribal than a local custom. I shall also omit many of the subjects dealt with in Part I. The answers under the heads of "Betrothal," "Marriage and Divorce," "Bastardy" contain much interesting information; they also tell us whether a tribe is exogamous or endogamous, a point which has a considerable bearing on the rule of succession, and they show how entirely the giving of a woman in marriage is regarded as merely a transaction between groups of agnates in the contracting *gôts*, to whom the wishes and feelings of the woman—if their existence could even be conceived—are matters of no consideration. These points are dealt with fully by Mr. J. Wilson at page 36 *et seq.* of his volume on the Tribal Customs of Sirsa. The consideration of the general effect of exogamy and endogamy falls more appropriately under another part of this work; it would be useless to attempt to give a list of exogamous and endogamous tribes, the custom of each tribe in each district must be looked for in its *Riwáj-i-ám*. But, speaking generally, it may be said that all Hindu Jats are exogamous that is, require a man to marry inside his own tribe, but outside his own and certain other *gôts;* that Muhammadan Jats are in practice the same, although they are bound to admit, at least in theory, the validity of any marriage allowed by Muhammadan Law; and that purely Muhammadan tribes are endogamous, allowing indeed marriage with any Muhammadan outside the prohibited degrees, but in practice marrying as far as possible women of their own subdivisions, or even families.

"Guardianship and Ward" and "Partition" are now regulated by legislative enactment, although the answers under these heads may still be found useful on some minor points. "Stridhun," or the special property of women, has no existence in the Punjab, as far as land is concerned. The subjects

on which I shall now proceed to review the answers are therefore reduced to these—

I.—Succession.

II.—Power of disposal of property—

i. by sale or mortgage,

ii. by adoption,

iii. by gift,

iv. by will.

III.—Pre-emption.

Succession.

10. I do not think it necessary to review all the answers of the *Riwáj-i-áms* on the subject of succession, for on many points the custom is so well known and has been so fully recognized by the Courts, that to quote either the *Riwáj-i-áms* or judicial decisions in support of it, would be superfluous. It is, for instance, as pointed out by Sir William Rattigan at page 9 of his Digest, a perfectly established general rule: Succession. General principles.

(1). That an estate descends in the male line only. Agnatic succession.

(2). That the simple rule of succession is to treat the estate as if left by the last male in the family tree who has left male heirs, *e.g.*, a man dies sonless; his brothers do not succeed as brothers, but as the sons of the father to whom the estate reverted on the sonless man's death, and if there are no brothers, the mother usually succeeds on a life interest, not as a mother, but as the widow of the father, the assumed last owner.

(3). This is the principle to be applied, however many generations the estate may have to go back, and in applying it the "right of representation," that is, the right of every descendant in the male line of the ancestor to whom the estate has thus reverted, to take his share without reference to the date of his father's death, is universally recognized. Right of representation.

(4). That whilst this rule of agnatic succession excludes all females, the widow and the mother, in default of male descendants, are usually allowed to hold the estate on a life interest, or till re-marriage. Life interest of a widow.

To these four cardinal propositions may be added the principle that amongst the agnates themselves male descent alone is regarded as the basis of right, and the shares of all sons are equal. No doubt descent through mothers, either in the form of the *chundavand* rule, or in the form of varying

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son's shares according to the tribe of the mother, is still recognized by some tribes, and in some families rather than tribes there is a recognition of the right of the eldest son to a larger share of the estate, or even to the whole of it. But in all these cases it is for the person alleging an exception to the general rule to prove it, and it would be useless, and almost impossible, to attempt to frame any complete list of the answers indicating the existence of an exception.

Rights of females.

Widows and mothers.

11. The custom regarding the rights of females requires further consideration. I do not propose to examine in detail the answers relating to widows and mothers. As already stated, the general rule undoubtedly is that, in the absence of sons and their descendants in the male line, they take the land on a life interest. It may of course be possible for a widow to prove in any particular case that she is entitled to take the estate, or a specific share in it absolutely, but the proof required would be of the strictest kind. Even the purely Muhammadan tribes of the frontier, who profess to follow Muhammadan Law, do not usually admit her right even in theory, and those who do admit it in theory evade it in practice. Her right to hold the estate for life originated in her undoubted right to maintenance, and many tribes still acknowledge the latter right only. Where the widow is allowed to take the estate on a life interest, she naturally is incapable of creating any charge on it extending beyond her own life, except for "necessity," which is usually defined as payment of her husband's debts and the Government revenue, the performance of obligatory religious ceremonies in connection with his death, the marriage of his daughters, and the necessaries of life for herself. Even when she has to raise money for "necessity," most tribes say that she must, in the first instance, apply to the agnates for the required sum, and some tribes even say that if for *any* reason she cannot manage the land without encumbering it, she must surrender it to the agnates, and be content with her original right of maintenance. In all cases the widow forfeits her rights by re-marriage to a stranger. As to whether she does so or not when she is re-married, or passed on, to her husband's brother or next agnate, custom differs; so it does as to how far unchastity involves forfeiture. The general principle appears to be that if a widow leaves her husband's house to live with another man, with or without marriage,

she undoubtedly forfeits all her rights in his land, but if she can maintain her position in the house she maintains her rights in the land also. This is probably what those tribes mean who say that mere secret immorality does not, but open and notorious profligacy does, entail forfeiture.

Daughters.

12. Like the widow, a daughter has, till marriage, a right of maintenance, and some tribes, though far more rarely than in the case of a widow, allow an unmarried daughter, in the absence of sons, to keep the land till marriage in satisfaction of this right. It is unnecessary to give a list of these tribes; such a limited tenure of the land is obviously not really a succession as heir, and as girls are almost invariably married whilst still children, and as the actual management of the land must almost always remain with the agnates, it can hardly ever be of any practical importance whether this right is nominally admitted or not. The right, however, is extended by some tribes which admit it to the case of a daughter who has married, but who has, on widowhood, returned to her father's house, and here the custom may be of practical importance. But cases under it must be very rare.

Unmarried.

Married.

13. Where the succession of a married daughter is allowed, the general principle is that she succeeds not as an ordinary male heir, but merely as the means of passing on the property to another male, whose descent from her father in the female line is allowed under exceptional circumstances to count as if it were descent in the male line. She will indeed continue to hold the land in her own name, even after the birth of sons and their attaining majority, for her own life, but she has no more power over it than a widow would have. If she have sons, the estate will of course descend to them, and their lineal male issue, in the usual way. But if she have no sons, or if their male issue fail, the land will revert, except in some special instances where her husband is allowed to hold for his life, to her father's agnates, just as it would have done if no exception to the general rule of agnatic succession had ever been made in her favour. This is the general rule laid down in the *Riwáj-i-ám* in which the subject is noticed at all, and the only exceptions recorded are in the following districts :—

Extent of their right when they are allowed to succeed.

In Multan it is said that where a daughter succeeds at all she succeeds absolutely, that is, with a full power of disposing, as she pleases, of the property, which

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will on her death pass not to her father's agnates but to her husband and his family.

In Dera Ismáíl Khán the same is said.

The general rule is that they are excluded by all agnates.

14. It is clear that under the general rule of agnatic succession a daughter can never *inherit*. Whatever favour custom may allow to be shown her under the form of a gift, the daughter is not, and cannot be, one of the *wárisán yak jaddi*, or group of agnates, amongst whom the estate of a sonless man is divided on his death, and who control his action during his life. This is the general principle laid down in all the *Riwáj-i-áms*, and the Settlement Officers of Umballa and Bannu say that even if there are no agnates at all the estate would not pass to or through females, but would pass to the tribe or village community. It is unnecessary to give a list of the answers in which this principle is laid down, but I will now notice all those in which a different custom is asserted.

Exceptions.

(1) When there are sons.

15. The first and most extreme case is that of the tribes who assert that custom is not followed at all, but that daughters take their legal share by Muhammadan law even in the presence of sons. This is asserted only by—

Some families in Multan;
A few Sayads in Firozpur;
Some tribes in Pesháwar;

the Sayads, Makwál, Malan, Vandata, and three other Jat tribes in the Dera Gházi Khán tahsíl of the Dera Gházi Khán District.

As regards Multan, in my review, as Settlement Officer, of the *Riwáj-i-ám* of that district, I expressed my opinion that although in some tribes and families custom was undoubtedly in favour of allowing gifts to daughters, it was very improbable that a single family could be found in which daughters took their legal shares under Muhammadan law in the presence of sons.

In Firozpur the Settlement Officer says that the Sayads could give no instances of daughters thus succeeding.

In Pesháwar the Settlement Officer says that all the instances given turn out on examination to be merely cases of voluntary gifts by brothers.

In Dera Gházi Khán no opinion is expressed as to the correctness of the answer recorded. Probably no instances are

given, or, if given, the result of an examination would be the same as in Pesháwar.

(2) When there are no sons.

16. A larger number of tribes admit custom, with its general principle of agnatic succession, and not Muhammadan law, to be their rule, but say that the general principle is limited, and that daughters succeed in default of agnates of a particular degree, or mention the agnates who exclude them, thus implying that in default of such agnates daughters would succeed.

They are said to succeed in the absence of, or to be excluded by, male lineal descendants in—

Gurgáon by the Sayads and Shekhs. But Mr. Wilson, the Settlement Officer, believes that the true custom is that they are excluded by any agnate who can trace his descent from a common ancestor who has held the land;

Sirsa by some Ráins, a strictly endogamous tribe. But the Settlement Officer thinks the existence of the custom very doubtful, and points out that if, or where, it does exist, the only effect of it is to pass the land to a near, if not the nearest, agnate;

Umballa by the Sayads, Shekhs, and Ráins;

Ludhiána by the Awáns, Gujars, Labánás, and Dogars, provided the daughter never left her father's house after marriage;

Gurdáspur by the tribes of the Shakargarh tahsíl generally;

Jhang all the Muhammadan tribes say that she succeeds *only if married to a near agnate;*

In *Muzafargarh* the Sayads say the same, but the Muhammadan Jats, Biluchís and "Miscellaneous Tribes" do not make this reservation;

Rohtak by the Afgháns of the Gohána tahsíl.

(3) Where there are brothers.

17. No tribes, except those who say that daughters succeed even when there are sons, say that they exclude brothers and brothers' sons.

(4) Where there are descendants of grandfather.

As regards first cousins, *i.e.*, agnatic descendants of the grandfather in

Hazára, the general rule, as stated by the people, is that of exclusion by any agnate, but the Settlement Officer's opinion is that in default of brothers and their issue it is very difficult to say what the custom really is;

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Dera Gházi Khán, the Bilúchis generally mention brothers and brothers' sons as the agnates who exclude; and in *Shahpur* some Khatrís of Bhera say that a daughter excludes an uncle and his sons.

(5) Where there are descendants of great-grandfather.

18. The descendants of the great-grandfather are given as the limit in—

Gurdáspur, i.e., the Settlement Officer, Mr. L. W. Dane, thinks this the proper interpretation of the "near agnates," who are generally said to exclude the daughter;

Lahore the general rule is total exclusion of the daughter, but the Rájpúts, Dogars and Aráins say that she inherits "if there is no agnate nearer than the fifth generation."

Ráwalpindi the general rule is that the daughter is excluded by "any agnate whose relationship to the deceased can be clearly traced," but some tribes say only by a "near agnate": their definition of this term varies from two to ten degrees;

Dera Ismáil Khán this is the general answer, and the Settlement Officer concurs in it;

Dera Gházi Khán by the Hindús of Sangarh;

Shahpur the Khukran Khatrís of Bhera say that a daughter is excluded by the agnatic descendants of a grandfather (*dáda*), but excludes those of a great-grandfather (*pardáda*);

Hoshiárpur the Sayads say that the daughter succeeds in the absence of brother's sons, and some other tribes put various more distant limits to her exclusion.

(6) Descendants of the great-great-grandfather.

19. The descendants of the great-great-grandfather are given as the limit of excluding agnates in—

Umballa generally, but the Settlement Officer's opinion on the point has already been given;

Ludhiána by a group of Hindu Jats, by the Muhammadan Jats, and the Rájpúts of the Ludhiána tahsíl.

Other limits.

20. Some limit, not clearly defined and not mentioned in any of the preceding paragraphs, is said to exist in the following districts:—

Bannu.—It is said that the agnate must be near *(karrib wa jaddi)*, but the Settlement Officer's opinion as to the real custom has been given above.

Jhelum.—An agnate "within any reasonable distance" is said to exclude. The Settlement Officer says that he has known agnates in the eighth degree exclude, and that it is doubtful how much farther the power of exclusion would extend.

General meaning of these answers.

21. I think that the general conclusion to be drawn from these answers regarding limits is this. Where the limit is a very close one, *i.e.*, where it is said that daughters succeed in default of male issue and in preference to brothers, or even in default of brothers and in preference to other agnates, the people giving the answer must be taken to at any rate mean what they say, and a sufficient number of instances should be forthcoming to enable us to say whether the answer is correct or not. When we get beyond this limit, I very much doubt if a sufficient number of instances could be found to prove any custom, such as the exclusion of a daughter by agnates of one generation, *e.g.*, descendants of a great-grandfather, and her succession in the presence of agnates of one generation higher. It is hardly necessary to say that the fact that the most extreme known instance of her exclusion was in the presence of agnates of one generation is no sufficient ground for presuming that she would succeed in default of such agnates. She would certainly have to produce instances of such succession, sufficient to prove that it was her actual right by custom. It might often happen that the estate was small and the group of agnates amongst whom it would be divisible very large. The succession might be allowed to take place simply because it was worth no one's while to contest it. I also much doubt if the people themselves really meant to lay down such a hard-and-fast principle. Probably they reasoned much in this way: they held, as a general principle, that for any man to succeed to land inside a village community he must be a member of this community, and be able to trace an agnatic descent from an ancestor who actually held the land. Strictly speaking, this principle would apply equally whether there were daughters or not, and in default of the agnate just described the land would, as observed by the Settlement Officers of Umballa and Bannu, pass to the village community, or the tribe. But it is very improbable that these bodies would enforce their rights if there was a daughter, especially if, as would constantly be the case, the daughter was living with her father at the time of his death, and perhaps already in possession of the estate even before his death. It would thus be easy for, if not a

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custom at any rate a general feeling to grow up, that in the absence of the agnate above described the daughter succeeds. But in endeavouring to express this feeling, or custom, the people would certainly not attempt to describe the agnate in whose absence a daughter succeeds in the abstract terms in which I have described him. They would, according to their common practice, use a concrete term; they would consider how far the pedigree tables of their own village or their own family went back, take the ancestor from whom the existing groups of agnates, their own *wárisán yak jaddi*, traced their descent, and name him, whatever his generation, as marking the limit of the exclusion of daughters by agnates. Taking both the answers themselves and the remarks of the Settlement Officers on this subject as a whole, this is, I think, clearly their real meaning.

Daughters' sons.

22. Daughters' sons are nowhere recognized as having any independent rights. How far they may be adopted, or how far gifts may be made to them, will be seen hereafter. Their right to succeed as *heirs* is entirely confined to their right to succeed their mother in the exceptional cases in which she has been allowed to succeed as a daughter. This right is undisputed.

Daughter's husband *khánadamád* or *ghar jawái.*

23. Precisely the same remarks apply to the daughter's husband. Sir William Rattigan, in paragraph 27 of his Digest, in speaking of custom on this point as indicated by judicial decisions, says :—

"A resident son-in-law, or *khánadamád*, was, under some of the older decisions, recognized as heir to his father-in-law's estate in default of male issue.

"But according to the more recent decisions it is his wife, as a daughter, and his male issue as grandsons, who, by reason of her continued residence with her father after her marriage, are alone intended to be benefited by the custom."

This paragraph represents perfectly correctly what may be called the general ideas of Punjab officers on this subject. There was, and is, a very general idea that the custom of making a "resident son-in-law" is very general throughout the Punjab, and that it of itself confers rights either, as was formerly supposed, on the son-in-law himself, or, as now believed, on the daughter, or rather on her sons. But this idea is in no way supported by the *Riváj-i-áms*. In the first place, even the

practice of taking a son-in-law and his wife into the house is not nearly so common as generally supposed; in many districts it is said to be altogether unknown. Where the practice does exist, the benefit to be derived from it is no doubt regarded by custom as one to the daughter's sons, and not to their father personally. But by custom mere residence in the father's house confers no rights on the daughter, her husband, or her children; it merely, in some districts or tribes, allows greater freedom of gift or adoption in such cases. It is expressly stated in all the *Riwáj-i-áms* that without a distinct gift, or adoption, or proclamation of appointment as heir, no right of succession is conferred by residence. The only answers at all in a contrary direction are:

In *Siálkot* some tribes in 1865 expressed an opinion that a *khánadamád* would succeed, in default of sons "if he renounced all claim to his own father's estate."

In *Ráwalpindi* the Ghakkars, Khattars, and Rájpúts (except the Chauháns) and the Hindús (except those of Kahúta), who are, however, nearly all priests and traders, say that in these cases the daughter (*not* the husband) is entitled to succeed in default of sons.

In *Hoshiárpur* the Jats of Garhshankar say that a *khánadamád* succeeds in default of sons.

Power of disposal of property.

General remarks on power of sale.

24. Having thus reviewed the Customary Law regarding succession to an estate on the death of its owner, I will proceed to consider it with regard to the power of the holder to deal with the estate during his own lifetime. The first point to consider is his power to sell or charge the estate for his own benefit. If this power is absolutely unrestricted, it would necessarily follow that there was an equally unrestricted power of gift and adoption. It would not so necessarily follow, though it might be inferred, that, if the latter power is unrestricted, the former must be unrestricted also. A man might be trusted not to alienate an estate for the benefit of others, although he certainly could not be trusted not to alienate it for his own benefit. But wherever the power of gift or adoption is restricted, there must necessarily be restrictions on the other power also, and it must be presumed that the cases in which gifts or adoptions

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are allowed are the only cases in which alienation, except for necessity, can take place at all, or at any rate that a sale could only be made to persons to whom the estate could be passed by adoption or gift.

Presumption against its existence.

25. What is the natural presumption attaching to an estate which its holder has obtained as a member of a tribe or village community is fully discussed in the Full Bench ruling of the Chief Court published as No. 107 of 1887, *Punjab Record*, which will be noticed more fully later on. It is sufficient to say here that it was the unanimous opinion of the Court that the initial presumption (which might of course be rebutted by other evidence) was that the holder of such an estate could not alienate it except for necessity. This natural presumption is fully supported by the records of custom. The *Wájib-ul-arz* of the early settlements seem hardly to have contemplated the possibility of any one voluntarily parting with his land; the usual entry is to this effect: "Hitherto there have been no sales or mortgages in this village, but if at any future time a proprietor should wish to sell or mortgage his land in order to pay the Government revenue or to provide for his own necessities (*záti zarúrat*) he must first offer it to his near agnates."

In the *Riwáj-i-áms* prepared under Mr. Prinsep in 1865 the last question was as to the power of a proprietor to alienate (1) ancestral, or (2) acquired property, or to divide it unequally amongst his heirs. There was a difference of opinion as to whether there was any distinction between the two kinds of property; the general feeling was that there was not. As regards ancestral property, the almost universal answer was that (except as regards a gift of a small portion in charity) the proprietor could not alienate it except for urgent necessity, and that he could not divide it unequally amongst his heirs.

Exceptions.

In the old *Riwáj-i-áms*.

26. The only answers to the contrary were—

In *Siálkot* the Kaláls, Dogars, and Pakhíwáráhs said that, if there are no sons, the heirs had merely a right of pre-emption.

The Bairúpiás and the Shekhs, Moghals and Patháns and Kakazaís said that he could do as he pleased if there were no sons.

In *Amritsar* the miscellaneous Muhammadans of Tarn Táran recorded that a father may, by a *written deed*, deprive a

son of his share. Many tribes also said that, if a son was of bad livelihood and had a wife or sons, the father could pass him over and give his share to his wife or sons; but, if the son had no wife or sons, the father could not deprive him of his share.

In *Gujrát* the general answer was that, whilst a proprietor could not alienate to spite a son or a brother, in other cases the heirs had only a right of pre-emption.

In *Kángra*, in Kulu, all the tribes say that there is no distinction between ancestral and acquired property.

The Brahmins, Khatrís, and Rájpúts say that a proprietor can alienate if there are no descendants of a grandfather; the Kanets say he can alienate to a *ghair shakhs* if none of the *yak jaddís* will give a full value. He cannot, however, exclude an heir or distribute his property unequally amongst his heirs. No instances of alienation are given.

In the later *Riwáj-i-áms*.

27. In the later *Riwáj-i-áms*, prepared on the basis of Mr. Tupper's questions, the power of alienation is usually treated indirectly, and the custom regarding it left to be inferred from the answers as to the power of gift. But in the following districts the general power of alienation is asserted or specially referred to :—

In *Hazára* a power of sale is said to exist, but sales are very rare and "regarded as disgraceful." And, although a proprietor may make an unequal distribution of his estate amongst his heirs, this must not be "greatly at variance with their proper shares."

In *Pesháwar* it is said that, except in Tappah Razzar, a proprietor may do as he pleases with his land; he may sell it or distribute it unequally amongst his heirs.

In *Bannu* the people assert that a man may do what he pleases with his land; he may sell or give away the whole of it; but the Settlement Officer says they can give no instance of his giving away even a part of it.

In *Dera Ismáil Khán* the people generally recorded that a man cannot sell his land except for necessity, but the Settlement Officer says that, as far as his knowledge goes, the free right of a man to do as he pleases with his land has never been questioned. His power to divide it unequally amongst his heirs is admitted everywhere, except in Tánk.

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In *Dera Gházi Khán* a proprietor may distribute his estate unequally, but he cannot completely disinherit any heir.

In *Montgomery* many of the tribes, and

In *Shahpur* the Hindús say the same.

In *Delhi* the Brahmins of Ballabgarh assert that a father may distribute his property unequally; but all the other tribes deny this.

In *Rohtak* the general answer is that the only check on sales and mortgages is the right of pre-emption; but in my abstract of the Rohtak *Riwáj-i-ám*, given in the Appendix, I have given my opinion as to the true meaning of this answer.

Alienation for the benefit of others.

Power to distribute an estate unequally amongst heirs.

28. The next point for consideration is the power of the holder of an estate, not to alienate it for his own benefit, but to deprive his heirs of their right of succession by disposing of it for the benefit of some one else. His power to make an uneven distribution of his estate amongst his heirs themselves has already been noticed. It is clear that custom generally gives him no such power; and that, even in the frontier districts where the existence of the power is asserted it is said by the Settlement Officers that the distribution wil only be upheld if it is substantially just and not greatly at variance with the proper shares. This is equivalent to saying that a proprietor has really no power to distribute his estate even amongst his heirs just as he pleases. The power of passing the estate to a single heir, or to a stranger to the exclusion of the heirs, by means of adoption or gift, rests on a different footing, and must now be considered separately.

Adoption.

Under Hindu Law.

29. It must be clearly understood that what is called "Adoption" in the *Riwáj-i-áms* has little or no connection with the adoption of Hindu Law. The latter is founded on a spiritual idea, varying from the belief that a son is necessary to save a man's soul from the "Hell called Pat," to the very natural feeling of regret that your line should become extinct; that there should be no one to represent you in the family gatherings and offer the *pind*. The essence of the Hindu adoption being true sonship, all the rules regarding it are intended to give effect to this idea. The person adopted must be a mere infant; his mother must be a person whom the adoptor could

have married; there is a formal transfer of the *patria potestas* from the natural to the adoptive father; there is the same religious ceremony as at the birth of a son: in short, the only difference between the adopted and the natural son is the one which cannot be obliterated—the birth itself.

Under Tribal Law.

30. Although adoption is, speaking generally, not recognized by tribes of Muhammadan origin, but is recognized by tribes of Hindu origin, whether they have remained Hindus or become Muhammadans or Sikhs, it has, as already remarked, no connection with the adoption of the Hindu Law. No doubt in some purely Hindu tribes, it may be usual to call in the Brahmins on the occasion of an adoption as on other important occasions of domestic life, and the Brahmins may employ some fragments of the Hindu ceremonial. The answer of some of the tribes that the child adopted must be under a certain age may also be founded on some vague ideas of Hindu Law. But it is probably correct to say that there is not a single tribe or section of a tribe in which any religious ceremony, or any limit as to age is really essential to the validity of an adoption. I am of course speaking of agricultural tribes, and not of the Hindús of towns, who may very possibly really follow the Hindu Law. The foundation of the customary adoption is not any idea of the spiritual benefits of sonship, but the practical benefit that will accrue to a sonless man from having some one to live with him and keep him company and help him to manage his land. In return for this benefit he offers the right of succession to his land. But the bestowal of this right necessarily involves the loss, at any rate to some of the agnates, of their own rights, and the admission of the adopted son as a member of the tribe or community. We should therefore expect to find that the Tribal Law (1) limits the persons from whom the adopted son may be taken; (2) insists on a public announcement of the fact of the adoption. This is exactly what we find laid down in the *Riwáj-i-áms*.

Presentation to the brotherhood or public announcement of the adoption.

31. As regards the second point, we find that, whilst some of the answers describe certain ceremonies or formalities as usual, they generally add that they are not absolutely necessary. But the answers, one and all, say that there must be a public announcement of the adoption to the assembled brotherhood. No doubt in early times, before the establishment of a regular judicial machinery, the "assembled brother-

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hood" acted as a Court of Justice. If the person to be adopted were not already a member of their body they would decide whether he should be admitted or not. If he were already a member, they would decide the objections of the nearer heirs whose rights were interfered with by the adoption. Now that objections to an adoption can only be decided by the Civil Courts on a suit by persons directly interested, one of the objects of the assembling of the brotherhood has passed away; it is still usual to assemble it, and it may still exercise some influence by persuading the parties immediately concerned not to go contrary to tribal custom, or feeling, either in making or opposing an adoption. But the second object, that of giving the persons whose interests are affected due notice of the fact of the adoption, and thus enabling them to object to it either before the brotherhood or before the Courts, still remains. It may not be absolutely necessary that there should be a formal calling together of the brotherhood for this purpose at a given time and place, but it is essential that there should be a definite act done by the person adopting, intended to constitute the adoption finally, and that this act should be proclaimed in such a way that all interested in it may know it. It follows from this that a mere "continued course of treatment," however valuable it may be to corroborate other evidence, does not of itself either constitute or prove an adoption.

Limits as to the person to be adopted.

32. I have already stated that as a general rule tribes of purely Muhammadan origin do not recognize adoption at all. Some tribes, converts from Hinduism, and in Umballa and Ludhiána even some purely Hindu tribes, also refuse to recognize it. But the Settlement Officer of Umballa doubts this and thinks that the adoption at any rate of a near agnate would be generally recognized. Where any adoption is allowed the strictest limit is that which confines the choice to the nearest group of heirs, which lays it down that an agnate descended from the adoptor's father, *i.e.*, a brother or brother's son, must be selected in preference to the descendants of the grandfather (first cousins and their issue), and so on in due order. In Ludhiána all the tribes, except the Dogars, all the tribes in the Ráya tahsíl of Siálkot, and in Lahore all the Hindu Jats and Rájpúts say that this is the rule. In Gurgáon and Sirsá preference is only insisted on in favour of brother's sons, but most of the *Riwáj-i-áms* say that the nearer the agnate is the better.

The nearest group of heirs.

33. The provision limiting the choice to some agnate, one of the *wárisán yak jaddi,* is so general that it will be sufficient to notice the exceptions to this rule. Any agnate.

34. The first of these is naturally the one in favour of near relations through females, a daughter's or sister's son. Such an adoption is allowed— Daughter's or sister's son.

(*i*). With the consent of the agnates:

In *Gurgáon and Sirsa* Mr. Wilson says this is now the custom, but the true old custom refused to allow it under any circumstances.

In *Rohtak* this is the general rule, but see *post.*

(*ii*). Where there are no agnates:

In *Umballa* this is generally allowed.

In *Ludhiána,* whilst most of the Hindu Jats say that a daughter's or sister's son can *never* be adopted, some Hindu Jats in Samrála, all the Muhammadan Jats, and the Sainís allow his adoption "if there are no near agnates," and the Settlement Officer would define "near agnates" as the descendants of the great-great-grandfather (*nakardáda*).

In *Amritsar* some tribes allow the adoption if there are no near agnates.

In *Gurdáspur* it is allowed, if there is no "suitable" agnate, by the zamíndárs of the Shakargarh tahsíls generally, those of Gurdáspur and the Muhammadans of Batála allow it only if he is also an agnate. The Hindús never allow it.

In *Siálkot* the majority of the tribes allow it if there is no "near" agnate. But some tribes of Jats in Daska, all the Daska Rájpúts, and the Saroch Rájpúts generally, *never* allow it.

In *Kángra,* failing agnates, any one within the *kaum* may be adopted.

In *Hoshiárpur* the adopting tribes of the Una and Lohárú taluqas of the Una tahsíl, the Rájpúts of Dasúya and the Brahmins of the three plain tahsíls, allow the adoption of a daughter's son if there are no agnates.

In *Rohtak* the tribes of the Rohtak and Jhajjar tahsíl say the same.

(*iii*). Without any regard to the agnates:

In *Firozpur* by the Muhammadan Jats and Aráins.

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In *Kángra* the general rule, as stated in the *Riwáj-i-ám*, has just been given, but Mr. Lyall thinks that the adoption, though denied to be valid theoretically, would generally be recognized in actual cases. In Kulu, and amongst the Gujars generally, the *kaum* is the only restriction.

In *Gurdáspur* by the Brahmins and Khatrís.

In *Gujrát* by the Hindu Jats.

In *Peshávar* by the few Hindús there.

In *Delhi* the Jats (Hindu and Muhammadan) generally allow this, if there are no *yak jaddis* within two or three generations. The Tagás (Hindu and Muhammadan) say that a "*yak jaddi*" *or* a daughter's son may be adopted.

In *Jullundur* the Awáns allow this if there are no brother's sons or grandsons. The Mahtans allow it without this restriction. But both tribes insist that the person adopted must be of the same *kaum*.

In *Gujránwála*, in the Wazirábád tahsíl, all the tribes allow this, but apparently only in default of agnates.

In *Jhang* all the tribes profess to allow this, but the Settlement Officer does not believe that there is any custom recognizing adoption.

In *Shahpur* the Hindús allow it.

In *Hoshiárpur* the Gujars of Dasúya, the Aráins, the Sainís and Rájpúts of Garhshankar (Hoshiárpur), the Khatrís and Jats profess to allow this (but see *Punjab Record*, No. 84 of 1895).

In *Rohtak* the answer of the tribes of the Sámpla and Gohána tahsíls is that agnates *or* daughter's and sister's sons may be adopted.

Other persons.

35. The adoption of a person not related either in the male or female line is very rarely permitted.

In *Ludhiána* the Dogars alone say that a person outside the tribe may be adopted.

In *Amritsar* some tribes allow the adoption of a *ghair gôt*, but none allow that of a *ghair kaum*.

In *Lahore* the Aráins allow the adoption of any Aráin.

In *Gujrát* the Hindús allow the adoption of a *ghair gôt* only if there is no agnate or daughter's or sister's son.

In *Siálkot* the Sayads, Shekhs, Patháns and Kakazais of Pasrúr allow the adoption of any Muhammadan.

In *Delhi* the Meos place no restriction on adoptions.

Power of the widow to adopt.

36. As the customary adoption is based on no theory of spiritual benefit to the adoptor, the theory of an adoption by a widow *to* her husband for his benefit would naturally not be accepted. The power of a widow to adopt is therefore not generally recognized. But as the widow, even more than the sonless proprietor, may require companionship and assistance in the management of the land, she is occasionally allowed to adopt. She is so allowed—

(*i*). With the express permission of her husband or the consent of the agnates :

In *Gurgáon* the consent of the agnates is required to the adoption of any non-agnate.

In *Firozpur* the written permission of the husband is said to be necessary.

In *Lahore* the same; and the person to be adopted must be distinctly specified.

In *Gurdáspur* the zamíndárs of Shakargarh and the Jat tribes, and Brahmins and Khatrís of Batála allow her this power, but all the other tribes deny her it.

In *Umballa* the power is generally denied, but some tribes allow it; but the instances of her doing so are very rare.

In *Kángra* this is almost universally allowed.

In *Delhi* all the tribes allow this.

In *Jullundur* the same (except the Mahtans).

In *Gujránwála*, the same.

In *Hoshiárpur* a few of the tribes.

In *Siálkot* some of the tribes of the Ráya tahsíl.

In *Rohtak* the tribes of the Sámpla and Gohána tahsíls.

(*ii*). Without such permission or consent :

In *Gurgáon* she may adopt any agnate. But the Káyaths, Játs, Musalman and Mullahs say that the express permission of the husband, or the consent of the agnates, is necessary for any adoption.

In *Sirsa* the Hindu tribes generally allow her to adopt any agnate without the express permission of her husband, or the consent of the other agnates : with their consent she can

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adopt any one. But the Banyás, Rorás, and Brahmins appear to place no restriction on her power of adoption.

In *Gujrát* the Muhammadans, who do not recognize adoption, allow the widow to make a gift to an agnate or to the son of a "resident daughter."

In *Rohtak* the tribes of the Rohtak and Jhajjar tahsíls allow her to adopt a near agnate of her husband's.

It need hardly be said that where the widow is allowed to adopt, she is at least subject to all the restrictions to which her husband would have been subject. It would seem at first sight that the declaration of a power to adopt "with the consent of the agnates" is meaningless, and that, as only an agnate could contest an adoption, it would be a mere truism t osay that a widow can adopt with their consent. But I think the expression has a further meaning, both in the case of widows and of sonless proprietors; and that the people intend to say that if the agnates *as a body* consent, the adoption would be valid and no individual agnate could object. I have classed as answers permitting a widow to adopt without the consent of the agnates not only those which expressly say that the consent is unnecessary, but also those which are silent as to consent. It is quite possible that in some of the latter the consent was taken for granted.

Gifts.

37. As remarked by several Settlement Officers, the questions of adoption and gift are in the minds of the people mixed up together. The only gifts really known to them are

Their general nature.

(1) gifts of very small portions of an estate for religious or charitable purposes; (2) transfers for the benefit of a near relative, usually a daughter or her sons, who would not otherwise succeed. It is true that it is said that gifts must always be accompanied by possession, but this does not mean, and the Courts have not interpreted it as meaning that the donor must at once relinquish all interest in the gifted property. It is only intended that, as in adoption, there should be some definite, irrevocable act, creating a fresh interest in the estate; and possession is considered to be sufficiently given if the donee is taken by the donor to reside with him or joined with him in the management of the property. The reasons for gifts and adoptions are the same; the customs regarding them are practically the same, and whenever the validity of a gift or an adoption is in question, the answer under both heads should be

read together. It may in fact be said that where an alienation in favor of a person who is not the natural heir is allowed, the Hindu tribes call the transaction an adoption and the Muhammadan tribes call it a gift.

No general power of gift.

38. It need hardly be said that an unrestricted power of gift is not generally recognized; the few cases in which it is asserted will be noticed later on under the head of "gifts to strangers." This remark applies to ancestral land. As to acquired land, the answers differ, but the majority do not allow a power—or at any rate an unrestricted power—to gift away even this. It may be taken as laid down by the *Riwáj-i-ám* as a general principle that a proprietor cannot gift away his estate, and it will be sufficient to note the exceptions to this rule.

To a daughter or her son.

39. The power of making a gift to a daughter or her son is generally denied altogether, but possibly some of the tribes who deny it would admit that the gift may be made—

(*i*). With the consent of the agnates:

In *Gurgáon* it is said that the gift can only be made with the consent of the agnates.

In *Sirsa* the same, except by the Ráins, who say that the agnates can only object for "a reasonable cause;" also

In *Rohtak*, but it is added that no one objects if the gift does not exceed 2 bighás or so. These gifts are allowed.

(*ii*). Without the consent of the agnates:

In *Firozpur* the Muhammadans, except the Dogars, say that a small portion of land may be given to a daughter in dower.

In *Umballa* strict Muhammadans, including Sayads, Ráins, and some Rájpúts, say that such gifts may be made if there are no sons, but the Settlement Officer thinks that they cannot, even amongst these tribes, be made in the presence of descendants of the great-great-grandfather, and the Jats generally say that they cannot be made at all.

In *Ludhiána* some Hindu Jats disallow such gifts altogether, but the general custom is that they can be made with the consent of the agnates, and the Settlement Officer thinks that only the descendants of the *nakardáda* can object.

The Dháliwáls alone of the Jats allow the gifts if there are no sons.

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The Awáns and Gujars allow them to a married daughter who has never left her father's house.

In *Kángra* the general rule laid down is that they can only be made when there are no descendants of the great-grandfather (*pardáda*). The Girths and Jats and some other tribes substitute the grandfather (*dáda*) for the great-grandfather. But in Kulu a much wider power is allowed.

In *Amritsar* the power is generally denied altogether by the Hindu Jats, who own $\frac{4}{5}$ths of the land, and the Settlement Officer thinks that the few who admitted it, in a qualified manner in 1865, would deny it now, and that the Muhammadans of Tarn Táran would do the same.

In *Gurdáspur* the zamindárs of Shakargarh say that such gifts may be made if there are no sons, and the Sayads would allow them up to $\frac{1}{3}$rd even when there are sons.

In *Lahore* the Jats and Rájpúts allow gifts of acquired property only, but the Dogras and Aráins allow gifts, in dower, even of ancestral land.

In *Siálkot* they are never allowed by the Daska Rájpúts, Dogars, and Labánás, or by the Brahmins and Khatrís of Zafarwál. They are allowed by the other tribes generally, if there are no descendants of the great-grandfather. But the Khokars and Awáns say that only "the legal share" can be given, whether there are sons or not.

Apparently the Pasrúr Rájpúts and the miscellaneous Muhammadans allow the gifts if there are no sons, but say that they must be *in writing*.

In *Gujrát* these gifts are not allowed by the Rájpúts of the Phálián and Khárián tahsíls; but the other Muhammadans allow them when the daughter and her husband have continuously resided with her father.

In *Multan* they are generally allowed when there are no sons.

In *Jhelum* they are only allowed, as in Gujrát, when a *ghar jawái* has been made; but the Settlement Officer says "very rarely" a small piece of land is given to a favorite daughter even when there are sons.

In *Ráwalpindi* as in Gujrát and Jhelum, a gift may usually be made when there is a resident son-in-law.

In all the frontier districts from Hazára to Dera Gházi Khán the power of gift to a daughter is asserted; but

In *Hazára* the Settlement Officer says land is very rarely given.

In *Pesháwar* gifts are not allowed in Tappa Razzar.

In *Bannu* it is said that if there are "near agnates" only one-third of the estate can be given to a daughter. But the Settlement Officer says there is no real custom.

In *Dera Ismáil Khán* these gifts are said to be allowed even when there are sons.

In *Dera Gházi Khán* the same, with the proviso that in this case the gift must be only "to a reasonable extent."

In *Delhi* the Riyas apparently allow gifts to a daughter's son, in default of male issue.

In *Shahpur* the Awáns allow these gifts if there are no sons. The other Muhammadans profess to allow them "up to the shares fixed by Muhammadan Law" even when there are sons.

In *Hoshiárpur* some tribes allow a gift of a small piece of land to a daughter on her marriage; other gifts to daughters are allowed by the Dogars (who, however, add that they are not customary), by the Khatrís (of acquired land only), by the Jats of Garhshankar (when there are no sons), and by the Muhammadan Jats of Hoshiárpur (whether there are sons or not). A few of the Una tribes allow them if there are no sons, and a few more allow them in the absence of near agnates.

In *Montgomery* the answers generally imply that gifts may be made to a daughter if there are no sons. But the Settlement Officer considers that custom is very doubtful on this point.

Gifts to strangers.

40. The power of gifting a small portion of the estate for charitable or religious purposes is generally recognized. The tribes differ as to whether this applies to ancestral as well as to acquired property, and also as to whether a man has a full power of gifting the latter. In some of the answers a particular fraction is given as the limit of the gift, but this is probably only meant to express a general idea of what would be thought reasonable. These gifts, with those in favour of daughters just enumerated, are the only ones usually allowed, and it is sufficient to notice any special provisions in the various districts.

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In *Sirsa* the Muhammadan Jats and Rájpúts say that any gift may be made "for a good reason" and "to a reasonable amount." But Mr. Wilson says this is not the true custom, and the answer is only given out of respect for Muhammadan Law.

In *Firozpur* the Hindús only allowed the gift of moveables, even in charity.

In *Ludhiána* the Dogars put no restriction on gifts.

In *Gurdáspur* the only power of gift recognized is that of acquired property, which is recognized by some of the tribes of Shakargarh.

In *Lahore* the Jats allow only acquired property to be given in charity; the Rájpúts allow "a moderate amount," even of ancestral property to be so given; the Dogars and Awáns do the same, and fix the limit at one-third.

In *Jhelum* the Settlement Officer says that in theory the power of gift is unrestricted, but in practice it is only exercised in the case of the *ghar jawái*.

In *Ráwalpindi* the power of gift generally is asserted by most tribes, but the Settlement Officer says there is no real custom beyond this that the gift of a "reasonable portion" of the estate would usually not be objected to, but a gift of the whole would. The Awáns, who are strictly endogamous, say that the donee must be an Awán. As a rule no distinction is made between ancestral and acquired property.

In *Bannu* the rule is said to be that where there are near agnates only ⅓rd of the estate can be given away; where there are none there is no limit. But the Settlement Officer says there are few or no instances of such gifts.

In *Dera Ismáil Khán* the Settlement Officer says that a gift, accompanied by possession, "will only be set aside in very special cases."

In *Jhang* the only restriction on the power of gift is said to be that the donee must not be a *ghair kaum*.

In *Muzaffargarh* the power of gift is said to be unrestricted in the Sanáwán and Alipur tahsíls. In the Muzaffargarh tahsíl it is the same, "so long as the donee does not injure or offend his heirs."

41. The idea that a proprietor can dispose of his estate by will is utterly repugnant to all the principles of Tribal Law, which only recognizes, and this in exceptional cases, two modes by which the ordinary rule of agnatic succession can be altered, *viz.*, adoption, or a gift accompanied by possession. That there could exist any custom recognizing wills in the state of society represented by the agricultural tribes is an obvious impossibility. Not one man in a hundred, or even in a thousand, is capable of drawing up, or even of dictating, a proper will, and to admit oral wills would be an absurdity. Nor can it be said that the power of disposing of property by will should be regarded as the same as that of gifts *inter vivos*. By a gift a man injures himself as well as his heirs; by a will he injures his heirs only. Tribal custom universally insists on a gift being accompanied by possession, just as it insists on the public notification of the appointment of an heir by adoption. The reason for the latter has already been given, and it applies equally to the case of gifts. We find therefore that the almost universal answer to the question regarding wills is that they are utterly unknown; and the few answers which profess to recognize them may be divided into two classes—(1) where the speaker has never known a case of a will being acted on, or even executed, but thinks it proper to give an answer which he supposes to be in accordance with Muhammadan Law, or which might be useful to himself; (2) where the speaker has in his mind not a true will, *i.e.*, a mere expression of wishes which may be altered or destroyed at any time, but a deed of gift intended to be irrevocable, though only to take effect on the death of the executor. In the few cases in which wills are recognized at all the answers are—

In *Lahore* the Jats say that a man may dispose of his acquired property by will, written or oral; the Rájpúts say that he can dispose even of ancestral property by written will. The Aráins say the same, to the extent of one-third.

In *Jhelum* wills are said to be "very little used and always disputed."

In *Ráwalpindi* most tribes profess to recognize wills, but are doubtful how far the consent of the heirs is necessary. The Settlement Officer says each man is answering merely to increase his own power and importance.

In *Bannu* the Shara is asserted to apply to wills, but they are really unknown.

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In *Dera Ismáil Khán* they are very rare, and "only recognized if substantially just."

In *Delhi* the Chauháns say that wills "are sometimes made," but all the other tribes say no instance of one is known.

In *Jhang* all the tribes say that wills are unknown, but they add that in future they will be governed, amongst Muhammadans by the Shara and amongst Hindús by the Dharmshástras.

In *Shahpur* the Khokars expressly repudiate wills. The other tribes, Hindús and Muhammadans, profess to recognize them, but say that they are not general; and the only instance of a will which is mentioned in the *Riwáj-i-ám* is one in which the will was upheld by the Chief Court as regards moveable property only, and set aside as regards immoveable.

In *Hoshiárpur* the Shekhs profess to recognize wills, but can give no instance of one.

In *Rohtak* some tribes profess to recognize wills; but see my remarks on the abstract of the answers in the Appendix.

Descent of gifted land.

42. Where a person out of the ordinary line of succession has been allowed to take land either by adoption or gift, he naturally transmits all his rights to his heirs in the male line. On his line dying out, by the general principle of succession stated at the beginning of this Chapter, the estate is treated as if left by his predecessors in title, until we come to a predecessor who has left male descendants and amongst these the estate is divided. In other words, the estate reverts to the natural heirs of the donor, and does not pass to those of the donee. This is the rule laid down generally in the answers dealing with this subject; the exceptions are—

In *Amritsar* and *Ráwalpindi* the answers of the tribes vary.

In *Siálkot* the Khokars and Bhatti Rájpúts and the Brahmins and Khatrís are exceptions to the general answer.

In *Bannu* the Settlement Officer says that the general rule is that the daughter's husband and his agnates succeed, but the Isakhels say the contrary, and produce instances.

In *Dera Ismáil Khán* the people say the father's agnates succeed, but the Settlement Officer thinks the husband's do.

Pre-emption.

General principles.

43. I will close this review of the *Riwáj-i-áms* with a few remarks on the subject of Pre-emption. It has been usual

to regard this as a village, not as a tribal, custom, and as originating in the Muhammadan Law. I think that this is quite an erroneous view, and that pre-emption is merely a corollary of the general principles regulating the succession to, and power of disposal of, land. In these matters the holder of the estate for the time being is subject, generally speaking, to the control of the group of agnates who would naturally succeed him, his *wárisán yak jaddi*. They can, as a general rule, altogether prevent alienations by adoption or gift, or by sale for the holder's own benefit; it would be only a natural rule that, when a proprietor was compelled by necessity to sell, these agnates should be offered the opportunity of advancing the money required, and thus saving what is really their own property.

Old *Wájib-ul-arz*.

44. In nearly all the old *Wájib-ul-arz* we find a provision securing this right either to the next heirs, or to the agnates generally, and after them to all members of the village community to the exclusion of strangers. The usual terms for the persons entitled to pre-emption in the first instance is *wárisán shikami wa-jaddi*, a phrase which has given rise to much judicial discussion, as will be noticed hereafter.

Riwáj-i-áms and Punjab Laws Act.

45. In the *Riwáj-i-áms* wherever the subject is noticed in detail, the agnates are treated as having the first right of pre-emption, but the usual entry is that pre-emption is now regulated by the Punjab Laws Act. This is no doubt perfectly true in a certain sense, for the Act, besides laying down rules of pre-emption intended to embody the more generally known customs on the point, especially provides for the recognition of all special customs. It would thus be perfectly open to a person claiming pre-emption on the ground of relationship to prove that, if it were held that the village was not "held on ancestral shares" and that therefore the Act itself gave him no right, he was still entitled to it by the special custom of his village, and, in my opinion, evidence as to tribal custom would be relevant evidence in support of village custom. At any rate it is not to be inferred from the entries either in the *Riwáj-i-áms* or the later *Wájib-ul-arz* that the custom of pre-emption is the same as the law, that the entries in the old *Wájib-ul-arz* are cancelled, or that only those rights of pre-emption are to be recognized which are conferred by the law itself.

CHAPTER III.

JUDICIAL DECISIONS.

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Introductory remarks.

1. Having thus completed the review of the principles of Customary Law as contained in the *Riwáj-i-áms*, I will proceed to consider how far they have been affected by the action of the Judicial Courts, or rather of the Chief Court of the Punjab, whose rulings alone ultimately affect general principles. As a member of the Bench of that Court, I desire at the outset to remove any impression that may exist that some of its recent rulings have been due to any change of "policy." "Policy" is a matter that can have no weight in influencing the decisions of a Court of Law. Judges no doubt should and do consider the probable effect of their decisions, and decisions on questions of custom naturally tend to preserve or destroy particular forms of social organization. As individuals the Judges may have their own opinions, in all probability they have different opinions, as to whether preservation or destruction is a good or a bad thing; but what they have to consider in their judgment is simply what the custom, assuming it to be one which can be recognized by the Courts at all, really is; whether an existing custom should in any way be interfered with is solely a question for the consideration of the Legislature.

No change in the principles of decision.

2. That the later decisions of the Chief Court have proceeded on somewhat different lines from the earlier ones is no doubt true in fact, but in both earlier and later cases the Court has followed but one and the same principle—that of deciding to the best of its ability according to the evidence before it. The changes in decisions, where they have occurred, have been due entirely to changes in the evidence, and these last changes have been due to very simple and natural causes, which are referred to in some of the later judgments. Briefly, they are these: The annexation of the Punjab necessarily brought in its train the establishment of Courts of Justice, whose Judges

were in the higher Courts Europeans, in the Subordinate Courts, either Europeans or natives taken for the most part from other Provinces. The Judges were aware that the people generally were governed by custom, and in order to secure decisions in accordance with custom, the Government very wisely reserved the most important class of cases, those affecting rights in land, for the exclusive jurisdiction of its Settlement Officers, that is, a special body selected for their ability and experience, and having special opportunities of ascertaining what the custom really was. Certain broad principles, such as the "right of representation" and the non-succession of females, at any rate as full owners, were at once recognized, for there were abundant instances to establish them. But on points on which there were necessarily but few instances, such as alienations without necessity, the adoption of, or gifts to, relations through females, the Courts were compelled to base their decisions on what they considered to be natural presumptions. Some officers, as in Shahpur, regarded the claims of relations through females as founded on "natural justice," but the usual, and under the circumstances not unnatural, presumption was that as the parties were almost universally either Hindús or Muhammadans, the law applicable, in default of clear proof of special custom, was the Hindu or Muhammadan Law. Thus it came to be assumed that the only persons who could object to an alienation were the persons who could do so under this law. Sufficient instances of the adoption of a daughter's son were forthcoming to show that the principle of Hindu Law, that the person adopted must be the son of a woman whom the adoptor could have married, was disregarded by the agriculturists of the Punjab, and it was inferred from this that custom generally favoured such adoptions. It was not till 1863-65 that it came to be recognized that the customs regulating the succession to, and enjoyment of, land in the Punjab were not local exceptions to the general Hindu and Muhammadan Law, but were general customs common to whole tribes. The preparation of the Tribal Records of Custom, and of that most valuable of all records, the Village Pedigree Table, commenced in 1865, but it could only proceed gradually, as district after district came under settlement. As this work approached completion it became more and more evident that the Tribal Law of the Púnjab had little or no connection with either Hindu or Muhammadan Law, but had an independent origin and

First basis of natural presumptions.

Further evidence on this point.

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general principles of its own. The Courts have, therefore, been led to look for guidance as to what, in default of sufficient precedents, should be the natural presumption, not to the Hindu or Muhammadan but to the Tribal Law, and it has been the consideration of the general principles of this Tribal Law which has of late years occupied the Full Benches of the Chief Court.

Rulings considered in detail.

3. With these preliminary and general remarks I will proceed to review the Chief Court rulings in detail. Where there has been any recent Full Bench ruling no previous decisions will be noticed as they are all fully discussed in the later judgment itself. I will take the rulings in the same order as I have taken the *Riwáj-i-áms*.

Succession.

Daughters and their sons.

For the reasons given in commencing my review of the *Riwáj-i-áms*, it is unnecessary to notice the rulings on the general principles of succession. They are fully set forth in Sir William Rattigan's Digest. In the question of the succession of daughters and their sons as heirs to the exclusion of agnates, I gave the answers of the *Riwáj-i-áms* in full, but I do not think it necessary to notice at any length the judicial decisions on this point. The first proposition in paragraph 23 of the Digest that "male agnates generally exclude daughters and their issue in succession to landed property derived from a common ancester" is undoubtedly correct. The second, that "agnates more remotely related than the seventh degree are rarely permitted to succeed in preference to daughters," is more open to question. In one sense the remark is of course perfectly true: cases in which a proprietor leaves as heirs only daughters and agnates more remotely related than the seventh degree are necessarily rare, and it may be said with almost equal truth as regards both daughters and agnates that they are "rarely permitted to succeed." There has never been any Full Bench ruling, laying down a particular degree of relationship as the point at which the burden of proof shifts from one side to the other*; the question is one on which the customs of various tribes are likely to differ; they do so according to the answers in the *Riwáj-i-áms* and they do so according to the decisions quoted in the Digest. As to general principles I have nothing to add to the remarks in my review of the answers.

* But *Punjab Record* No. 101 of 1893 may be consulted.

Khánadamád or *ghar jawái*, (resident son-in-law).

4. I have, in my remarks, quoted and concurred in the general rule laid down in the Digest as to the rights of the *khánadamád*, and I am not aware of any recent decision recognizing in his favour any right of succession except by adoption or gift. But the rule laid down in remark 2, paragraph 27, that on the death, without sons, of a *khánadamád* who has succeeded in this way the estate passes to his, and not to his father-in-law's, heirs, is quite opposed to what is laid down in the Full Bench ruling, *Punjab Record*, No. 12 of 1892, and the decisions quoted in support of it must be considered as overruled by the later judgment.

Lapse to the Crown.

5. The remark in paragraph 28 of the Digest that if there are no heirs the property goes to the Crown, is only true, when the property forms part of the land held by a village community, if the term heirs is interpreted in its widest sense, and then it would be a truism. When one group of proprietors in a village community becomes extinct their rights pass to the surviving groups; there must always be heirs as long as any member of the community survives. If it is meant that the property of a man who leaves no blood relations passes to the Crown and not to the other village proprietors the proposition cannot I think be accepted. There are no rulings on the point, for the simple reason that the Crown has never attempted to assert a claim of this nature.

POWER OF DISPOSAL OF PROPERTY.

Alienation by a sonless proprietor for his own benefit (mortgage or sale without necessity).

General presumption.

6. The Full Bench ruling on this point is published as *No. 107 of 1887 of the *Punjab Record*, the head note of which is as follows:—

Full Bench No. 107 of 1887.

"In the central districts of the Punjab, in cases where the power of a sonless Jat proprietor to alienate ancestral land without necessity is in dispute, the *onus probandi* generally lies on the person asserting the existence of such power."

The grounds for this decision were briefly that there is no "natural presumption" as to the extent of any man's power to dispose of property of which he is in possession; the question must depend on his personal law: this, in the case of an

*The parties in this case were Sus Jats of Hoshiárpur.

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agriculturist in the Punjab is not the Hindu Law but the Customary Law of his tribe, and the general principles of that law are opposed to an uncontrolled power of disposition.

And No. 73 of 1895.

7. In a later Full Bench ruling No. 73 of 1895, *Punjab Record*, a case from the Delhi District, it was pointed out that the principles laid down in No. 107 of 1887 were specially said to apply to the central districts of the Punjab merely because it was a well known fact that in these districts the village communities consisted as a rule of members of well known agricultural tribes, and that the true principle of the judgment was that where the land which the holder for the time being seeks to alienate is found to have come to him from his ancestors, as his share of the land held by them as members of a village community, the initial presumption is that he has not an unrestricted power of alienation. This principle is not restricted to any particular locality, but is equally applicable wherever the owner's title has originated in the manner above described.

An unrestricted power of alienation found not to exist in later cases.

8. The general principle thus laid down has been followed by the Court in all its later decisions, and in the following reported cases where an unrestricted power of alienation was asserted, it was found not to be proved:—

No. of case.	Tribe of alienor.	REMARKS.
	Rohtak District.	
64 of 1889	... Sidhu Jats	... This was an alienation by a widow.
	Firozpur District.	
50 of 1895	... Sodhi Khatrís	... The general principle was found to exist, and to forbid the creation of occupancy rights merely to prejudice the heirs.
	Jullundur District.	
26 of 1888	... Ladhu Jats	... The objector was an agnate in the 5th degree.
167 of 1888	... Barech Jats	... The objector was an agnate in the 4th degree.
33 of 1889	... Kol Jats	... Relationship not stated.
72 of 1892	... Sindhu Jats	... The objector was a nephew.
145 of 1894	... Naru Jats	... The objector was a first cousin.
	Hoshiarpur District.	
18 of 1890	... Mahtams	... The general principle was upheld, but the alienation in favour of a brother's son objected to by the son of another brother was held valid as a gift.

No. of case.	Tribe of alienor.	Remarks.
	Hoshiarpur—*concluded.*	
75 of 1891	... Mahtan Rájpúts,	The objectors were an uncle and first cousins.
35 of 1892	... Gujars ...	The alienation was in favour of the sons of one brother and objected to by the sons of another brother.
90 of 1892	... Brahmins ...	The sale was to a sister's son, objected to by brother's sons.
88 of 1893	... Gondal Jats ...	The objector was a son.
17 of 1893	... Mahtan Rájpúts,	The objector was a brother.
2 of 1895	... Gagh Jats ...	The principle laid down by the Full Bench was held to apply *a fortiori* where the objector was a son.
	Amritsar District.	
104 of 1887	... Randháwa Jats ...	The objectors were first cousins.
144 of 1888	... Do. ...	The objectors were nephews.
185 of 1888	... Not given. ...	The principle was not denied, the only question was as to the nature of the necessity.
112 of 1891	... Sádhs (Bairágís)...	The objector was a son.
53 of 1892	... Jats, *gôt* not given,	The plaintiff, a distant agnate, sued, on the strength of a deed of sale, to recover possession of the entire estate from other agnates equally related.
61 of 1892	... Goráya Jats ...	A merely colourable mortgage in favour of one nephew objected to by other nephews and held invalid.
101 of 1893	... Muhammadan Jats (Sanghar).	The objector was an agnate in the 6th degree.
70 of 1894	... Jats, *gôt* not given	The general principle was admitted, but necessity was held proved.
34 of 1895	... Basrai Jats, Tarn Táran.	The alienation was to a stranger. The objectors were apparently agnates, but their relationship is not given.
	Gurdáspur District.	
14 of 1890	... Muhammadan Rájpúts, Bhattís.	The objectors were nephews.
41 of 1890	... Gadari Jats ...	Relationship not stated.
	Lahore District.	
104 of 1892	... Aráins ...	The objectors were nephews; the alienation was in favour of a sister's daughter's husband. It was held invalid, although the *Wájib-ul-arz* apparently gave an unrestricted power of alienation.
	Sialkot District.	
89 of 1890	... Chima Jats ...	The objector was related in the 6th or 7th degree.

CHAP. III.	No. of case.	Tribe of alienor.	REMARKS.
		Gujrat District.	
	44 of 1890	... Muhammadan Jats (Mangriáls).	The objector was related in the 5th degree.
	129 of 1892	... Gondal Jats	... The sale was to a sister's son; objected to by brother's sons.
	133 of 1892	... Sayads	... Residing in the town of Gujrát, but the land in dispute was in two neighbouring villages. The objectors were agnates in the 6th degree; apparently the alienee was not an agnate, though this is not distinctly stated.

Exceptions.

9. In the following cases alienations were upheld :—

		Umballa District.	
	68 of 1888	... Dhanoi Jats	... This was really a case of a gift by a father to a widowed daughter who had lived with him for many years. It was upheld as such to the extent of allowing the daughter a life interest. The relationship of the objecting agnates is not given.
		Hoshiarpur District.	
	122 of 1893	... Bedís	... An alienation in favour of the son of one brother objected to by the sons of another brother, upheld on the ground that as the Bedís were not agriculturists and were not members of the village community, but only *málik kabza* of the land which had come to their family by gift, it was for the objectors to prove the alienation invalid, and they had failed to do so.
		Amritsar District.	
	198 of 1889	... Hindu Jats	... Held that as the alienation was in favour of a distant agnate, and the objecting agnates were equally distant, it was for them to prove it invalid by custom, and they had failed to do so.
	82 of 1890	... Hindu Khatrí, agriculturists.	The alienor, a Hindu, was the descendant of one of three brothers; he alienated in favour of the descendant of another brother who had remained a Hindu. The objectors were the descendants of the third brother who had become Muhammadans.
		Gujrat District.	
	16 of 1889	... Gujars	... The sale was to a nephew and objected to by other nephews. The Court on the strength of two previous decisions laid the burden of proof on the objecting nephews, and held that they had failed to sustain it.

Not really exceptions.

10. It is thus seen that the so-called exceptions so far from questioning the correctness of the principle laid down by the Full Bench distinctly affirm it. They do not find that there is an unrestricted power of alienation even in these cases; they at least imply that there is not, and all that is laid down is that, treating the alienations as gifts to near relatives, it was for the objectors, who were not nearer, but only equally near, relatives to prove that they could not be made.

Necessity.

Remarks as to it in various cases.

11. As to what constitutes "necessity," there has not been, and there hardly could have been, any Full Bench ruling. But the following opinions as to the general principle on which the question should be dealt with have been expressed by various Judges in dealing with particular cases which have come before them.

In *No.* 104 *of* 1887 (Powell and Roe, JJ.), it was remarked by myself that "a creditor is justified in advancing a reasonable sum if, after due enquiry, he has a *bonâ fide* belief that it is required for, and intended to be spent on, a necessary purpose. He is not responsible for the expenditure of the money after it has passed out of his hands."

In *No.* 26 *of* 1888 (Burney and Roe, JJ.), it was held that even if some debts existed there was no necessity for a sale of the land in order to pay them off. The debts alleged formed but a comparatively small portion of the consideration, and the whole sale was declared of no effect against the plaintiff's reversioners.

In *No.* 185 *of* 1888 (Burney and Roe, JJ.), it was held that the personal necessity (*záti zarúrat*) justifying an alienation must be restricted to demands which the proprietor could be compelled to satisfy either by law, or by public opinion having in his eyes the force of law.

In *No.* 72 *of* 1892 (Rivaz and Stogdon, JJ.), it was laid down that the vendee is protected if he satisfies himself, before concluding the sale, that the previous debts alleged are really due, and then proceeds to see that they are duly discharged. It is not necessary to trace each debt to its origin, and see whether it was contracted for necessity or not.

In *No.* 90 *of* 1892 (Stogdon and Bullock, JJ.), Mr. Justice Stogdon held that a sonless proprietor must pay off his debts, and that the raising of money to discharge them constitutes

CHAP. III. necessity. What is a valid necessity may be often a question of custom, some tribes construing the term much more widely than others. Mr. Justice Bullock was, however, of opinion that the last creditor lending money on the security of ancestral land must satisfy himself of the necessity of the previous debts for the payment of which he is lending his money.

In *No.* 93 *of* 1892, Sir H. M. Plowden, Senior Judge, in remanding a case for further enquiry laid it down that the obligation of a sonless proprietor to pay off his just debts is a legal necessity which will justify the creation of a charge on the land; similarly

In *No.* 117 *of* 1893 (Sir H. M. Plowden and Frizelle, JJ.), it was held that the payment of a just debt legally enforceable constitutes "personal necessity" without regard to the purposes for which such debt was contracted; and

In *No.* 24 *of* 1894 (Sir H. M. Plowden and Roe, JJ.), it was observed by the former that "an alienation by a proprietor to pay off his just debts constitutes necessity and forms a valid charge on the land not only in his own hands but also in the hands of his heirs. Though heirs who contest an alienation of ancestral property by their predecessor in title are entitled to demand, as against themselves, strict proof that an alienation to which they were no parties was made on account of an antecedent just debt of their predecessor, there is ordinarily no need to go further and enquire whether such debt was necessarily incurred."

In *No.* 70 *of* 1894 (Benton and Stogdon, JJ.), the former remarked that "in the management of agricultural affairs, a very strict economy and a very excellent management, must not be insisted on, so that there may be no necessity to alienate or to trespass upon the rights of reversioners * * ordinary *bonâ fide* management, and by no means necessarily successful management, is all that can be demanded."

Their general effect.

12. I think it may be gathered from the above remarks that the opinion of the Court is that "ordinarily" the existence of a *bonâ fide* just debt is sufficient to constitute necessity, and it is unnecessary to trace this debt to its origin. But the debt must be a just and *bonâ fide* one, and the creditor advancing money for its payment must take reasonable steps to satisfy himself that it is so. If he knew, or had reason to believe, that the antecedent debt was not incurred for any

necessary purpose, I do not think the Court would hold him justified in advancing money for its payment. If for instance a proprietor were to say to A—"I require money for no necessary purpose, and I cannot therefore pledge my land as security for it in the first instance. But if you will induce B to lend me the money, I will borrow from you, and repay him the next day; your money will then have been advanced to pay off an antecedent just debt and it will form a valid charge on my land,"—it would be reducing the law to an absurdity to hold that an alienation in favour of A was justified by necessity. Similarly, payment of land revenue, and other like charges, is undoubtedly a necessity, and money borrowed for such a purpose would "ordinarily" be a valid charge on the land. But this would not justify a proprietor with an ample income in spending the whole of it on himself, and in creating a charge on the land for all the necessary payments. I think that all that can be said is that the general principles above enunciated are those which will be followed in all ordinary cases, but that the Court will always go fully into the particular circumstances of each case that comes before it, and will exercise its discretion in dealing with any special questions which may arise.

ALIENATION FOR THE BENEFIT OF OTHERS.

Adoption.

General principle of adoption.

13. In a most lucid and exhaustive judgment, in the case reported as No. 50 of 1893, *Punjab Record*, which was a reference to a Full Bench of the question of presumption in cases of adoption of daughter's sons, the learned Senior Judge, Sir H. M. Plowden, went thoroughly into the whole question of adoption. Reviewing the *Riwáj-i-áms* and other Records of Custom, he points out, as I have done, that adoption is, speaking generally, only recognized by the tribes which are, or were originally, Hindús, that is, that it is almost confined to the central and eastern districts of the Punjab, and that it is founded, where recognized, on no idea of spiritual benefit, but on the practical benefit of companionship and assistance. The power to obtain this benefit by giving a right of succession to the land is one which would naturally depend on the Customary Law affecting a proprietor's power of dealing with land generally. On this point the learned Judge observes:

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Presumption to be drawn from the general principles of Customary Law.

"It is a common feature of Customary Law throughout the Punjab, that no individual, whether or not he has male issue, is under ordinary circumstances competent by his own sole act to prevent the devolution of ancestral land in accordance with the rules of inheritance, that is, upon his male descendants in the male line, if any, or failing them upon his agnate kinsmen in order of proximity. The exercise of any power which would affect the operation of these rules, to the detriment of the natural successors to ancestral land, is liable to be controlled by them, whether the act done be a partition or a gift or a sale or mortgage otherwise than for necessity.

* * * * * *

"It is to be expected that this power (of adoption), as it is capable of being exercised to divert the devolution of ancestral land from the ordinary course, should be as jealously guarded in the interests of the presumptive heirs as other similar powers, and I think it is unquestionable that, speaking generally, it is so guarded."

14. Sir H. M. Plowden continues—

"Two important matters are apparent from the Records of Custom which have been examined:

Necessity of a public act of adoption.

"The first is that it is everywhere insisted on that there must be a public act of adoption in the face of the brotherhood. Formerly this generally, if not invariably, took the form of an assemblage of the brotherhood, and a publication of the fact of adoption accompanied with a distribution of sweetmeats, or other festivities usual on the birth of a son. Recently, the public execution of a writing has, in a few tribes, been admitted conventionally as a substitute for a feast, especially if the adoptor has small means. It can hardly be doubted that this assemblage of the brotherhood served a double purpose—one, that there should be an unequivocal manifestation of the adoptor's intention to adopt; and the other, that the consent of the brotherhood to the adoption should be signified, the latter being deemed as necessary as the former to confer on the person adopted a recognized position as heir.

"It may be that among some tribes, and in some places where adoption is recognized, the adoptor has an unrestricted choice among his agnates, but this is certainly not the case everywhere. Where he has, the assemblage of the brotherhood is still something more than a mere form, for acceptance of the

sweetmeats distributed can be construed into participation in the ceremony and be taken to imply acquiescence in the adoptor's choice, submission to an act which, though it may not be approved, cannot be impeached.

"When, however, the purpose is to adopt a person who is not in the line of heirs, the importance of the adoption being made in the face of the brotherhood is apparent. Not only is the adoptor's intention publicly revealed, but an opportunity is given to all concerned to take exception to his act. Among the Ráins of tahsíl Batála, according to the *Riwáj-i-ám* of 1869, a man may adopt whomsoever he likes; if from his own kin, the assemblage of the brotherhood need not take place, but if outside the clan, the brethren must be assembled.

"It is a significant fact that deeds of adoption almost invariably state, often it is to be feared untruly, that there has been a previous adoption with a distribution of sweetmeats, and that the person adopted has been brought up as a son and resided with the adoptor. The cumulative force of the evidence as to custom now before us, coming from so many districts, and relating to so many tribes, and disclosing as it does a universal insistance on a formal act of adoption in the presence of the brotherhood, is very great. It points, as a whole, to these conclusions, that every adoption needs the assent of the brotherhood, express or tacit, that every instance of adoption in which there is not trustworthy evidence of some public act done before the brotherhood (conceding that residence for a long period of the adopted with the adoptor, and his treatment in all respects as a son *may be evidence of a prior act*) is fairly open to the suspicion that there has been at best a counterfeit, and not a genuine adoption, and when the act consists only of a document executed in anticipation of approaching death, that there has been mere nomination of a successor in the nature of a bequest. I may add my opinion that in No. 58 of *Punjab Record* of 1879, it would have been probably more in accord with actual usage to presume that adoption by a testamentary instrument, executed in contemplation of death, was an ineffectual mode of exercising the power of adoption, until the contrary was proved by evidence. With these records in view it seems to me a fairly accurate description of normal customary adoption in the Punjab, that it is essentially a formal public installation of an heir, selected from among his kinsmen and presumptive heirs, by a sonless man."

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Presumption against the validity of the adoption of a non-agnate.

15. The second point noticed by the learned Senior Judge is the presumption to be drawn from the records against the validity of the adoption of a daughter's son. This I will notice fully in its proper place. I am now only dealing with the general nature of the "Customary Adoption" and the acts necessary to establish the *factum* of it. I have quoted at length Sir H. M. Plowden's remarks, which entirely confirm the opinions expressed by myself in reviewing the *Riwáj-i-áms* in the last Chapter, because they set forth in clear language the ruling of the Court, and the reasons for it. This ruling of the Full Bench, of which the other members were Benton and Rivaz, JJ., who merely expressed their entire concurrence in it, must be regarded as the final exposition of the law on this point and it has been followed in all subsequent cases. In accordance with it--

Cases in which act of adoption found insufficient.

16. In *No.* 94 *of* 1893, *Punjab Record*, (Frizelle and Rivaz, JJ.), a case amongst the Dháliwál Jats of Ludhiána, a mere deed of adoption in favour of an agnate, not followed or preceded by any treatment as a son, was held invalid.

In *No.* 96 *of* 1893, *Punjab Record*, (Frizelle and Rivaz, JJ.), a case among the Jaj Jats of the Garhshankar tahsíl of Hoshiárpur, a mere recital of a previous adoption in a deed which did not itself profess to be a deed of adoption, was held insufficient.

In *No.* 142 *of* 1893, *Punjab Record*, (Sir H. M. Plowden and Stogdon, JJ.), a case among the Sindhu Jats of Firozpur, it was laid down that an adoption by deed alone by an old sonless man, to the prejudice of his presumptive heirs, is not ordinarily, if at all, recognized, as valid by custom.

In *No.* 122 *of* 1894, (Stogdon and Channing, JJ.), a case among the Aulakh Jats of Amritsar, the Court, whilst holding that an adoption of a step-son, a non-agnate, in the presence of agnates of the seventh degree was opposed to custom, also expressed its opinion that the mere execution and registration of a deed, falsely reciting a previous adoption, were insufficient to establish the *factum* of adoption, even though followed by mutation of names.

In *No.* 138 *of* 1894 (Frizelle and Benton, JJ.), a case among Rájpúts of the Una tahsíl, Hoshiarpur, it was pointed out that religious ceremonies were in no way essential to a

customary adoption, and that their addition would not change it into an adoption under Hindu Law.

Adoption not recognised.

17. In the Full Bench decision just referred to it was pointed out that the power to adopt at all was not universally recognized among tribes of Hindu origin, even when they had remained Hindús. In the following cases the power was asserted and denied :—

In *Umballa*, among the Chauhán Rájpúts (Muhammadans), in No. 40 of 1891 (Benton and Rivaz, JJ.), a case of an adoption of a daughter's son, there was a full enquiry under a remand as to the correctness of the answer in the *Riwáj-i-ám* that neither the Chauhán Rájpúts, nor the Muhammadan Rájpúts generally, recognized any power of adoption. No instances could be given of the exercise of such power and the answer was held correct.

In *Ludhiána*, in No. 34 of 1894 (Benton and Rivaz, JJ.), in a case amongst the Manj Rájpúts (Muhammadan), where the adoption was that of a daughter's son, who was also an agnate (the tribe being endogamous), there was a similar enquiry with the same result.

In *Hoshiárpur*, in No. 105 of 1891 (Rivaz and Stogdon, JJ.), a case among Muhammadan Gujars of the Garhshankar tahsil, where the adoption of a daughter's son was objected to by brothers, the return to a remand order for enquiry in all the tahsíls, was that the power of adoption was not recognized at all by the Muhammadan Gujars of the Hoshiárpur and Garhshankar tahsíls, and that instances of its exercise were very rare in Una. It was held by the Court that no custom recognizing adoption was proved.

And in No. 13 of 1894 (Benton and Rivaz, JJ.), a case among the Hindu Rájpúts of the Una tahsíl of the same district where the adoption of a daughter's son was objected to not by a near agnate, but by the Rái, or head of the clan, who was declared by the *Wájib-ul-arz* to be entitled to succeed in default of near agnates, there was a very full enquiry on remand. The *Riwáj-i-ám* allowed no power of adoption. The defendant who asserted the existence of the power alleged five instances of its exercise and relied on four judgments of the local Courts. The instances on examination were found not to be in point, and the local Courts had proceeded on the presumption that adoption was allowed. There was, however, one previous

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case in which there had been a very full enquiry, and it had been held that the Hindu Rájpúts of Una did not recognize adoption, and this was the finding of the Court in the present case.

In *Gujrát*, in No. 79 of 1893 (Frizelle and Rivaz, JJ.), a case among the Aráins of the Gujrát tahsíl, where the adoption of the son of a first cousin was objected to by brother's sons, it was held that adoption was apparently not recognized at all by any of the Muhammadans of Gujrát, and that it was certainly not proved to be recognized by the Aráins. If there was any exception to this general rule it was in favour of a *khánadamád*.

Adoption from among agnates equally related

18. Where the custom of adoption is recognized at all it would almost necessarily permit the selection of one agnate in the presence of agnates similarly related, and to deny the power of making such a selection would be practically to deny the power of adoption altogether.

In No. 95 of 1889 (Powell and Frizelle, JJ.), among the Sainís of the Umballa District, the adoption of a nephew was objected to by other nephews who disputed both the *factum* of the adoption and its validity by custom. After an enquiry on remand both points were decided against the objectors.

In No. 182 of 1889 (Burney and Powell, JJ.), a case among the Khokar Rájpúts of the Sharakpur tahsíl, Lahore, the adoption by *a widow* of her husband's first cousin was objected to by agnates of the same degree. It was held valid, on the strength of five instances of similar adoptions, in three of which the objections of other agnates had been overruled. The real dispute seems to have been as to a *widow's* power to adopt.

In No. 4 of 1892 (Benton and Rivaz, JJ.), a case among the Tánk (Hindu) Jats of the Sonepat tahsíl of Delhi, where the adoption of an agnate in the fourth degree was objected to by other agnates similarly related, both the *factum* of the adoption and its validity by custom were denied, as in No. 95 of 1889, and the result, after enquiry on remand, was the same as in that case.

Adop of more remote in presence of nearer agnates.

19. The adoption of a more remote in the presence of nearer agnates is a considerable extension of the power of selection. We have seen that the *Riwáj-i-áms* very generally,

where they recognise the power of adopting an agnate, say "the nearer the agnate the better," and some of them lay it down as a positive rule that the selection must be made from the nearest group at any rate of "suitable" agnates. In the cases reported in the *Punjab Record* there have been the following decisions on this point:—

In the *Delhi District*, in No. 39 of 1890 (Roe and Frizelle, JJ.), a case among the Dogar Jats, the *Wájib-ul-arz* apparently only gave a preference to the sons and grandsons of brothers. The objectors were not so related. There was a remand for further enquiry, but there is no detailed account of the evidence taken. It would seem, however, that instances had been given of the adoption even of daughter's or sister's sons. But the judgment merely says that the two lower Courts making the return concur in finding the adoption valid by custom and that no sufficient ground has been shown for differing from this finding.

In *Firozpur*, No. 38 of 1890 (Burney and Roe, JJ.), was a case among the Dháriwál Jats, in which the adoption of a step-son who was also an agnate, *i. e.*, the adoptor had married by *karewa* the widow of an agnate, was objected to by nearer agnates. There was a remand for enquiry into custom, but, as in the last case, the judgment on receipt of the return tells us little as to what the evidence was. It accepts the concurrent findings of the lower Courts in favour of the adoption, and says that it has hardly been contended in the Chief Court that the adoption would not have been valid if it had taken place when the person selected was a child.

In *Ludhiána*, in No. 114 of 1889 (Powell and Frizelle, JJ.), a case among the Saraha Jats, the adoption of a more remote agnate was objected to by nephews. The *Riwáj-i-ám* was against such an adoption, and apparently there were no instances to support it. But the Court held that a power of adoption being admitted generally, it was for those who asserted restrictions on it to prove them, and this they had not done. I doubt if this would have been the ruling if the case had been considered after No. 50 of 1893.

In No. 94 of 1893, a case from the same district, but among Dháliwál Jats, the Court (Frizelle and Rivaz, JJ.), expressed the opinion that the cases reported as Nos. 79 of 1882, 15 of 1883, and 114 of 1889, would be sufficient authority for holding the adoption valid by custom, if the *factum* were proved. But the question of custom was perhaps not so fully gone into as it

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CHAP. III. otherwise would have been, as it was held that the *factum* was not proved.

In No. 92 of 1894 (Plowden, J.), another Ludhiána case amongst the Hindu Jats of the Jagráon tahsíl, it is intimated that, in accordance with the *Riwáj-i-ám*, the adoption of any one other than a near agnate requires the consent of the *wárisán yak jaddís*, but the actual ruling is that a widow has no power of adoption, and still less could she adopt a daughter's son.

Similarly, in *Lahore*, in No. 47 of 1895 (Rivaz and Chatterji, JJ.), a case amongst Sindhu Jats, although the *Riwáj-i-ám* is referred to as prescribing the selection of a near agnate in preference to a more remote one, the actual ruling was only that the adoption of a daughter's son, or other non-agnate was, notwithstanding previous decisions to the contrary, invalid by custom.

I do not think that it can be said from these decisions that in any case in which the *Riwáj-i-ám* imposes restrictions on selection even from among agnates, it has been proved affirmatively that no such restriction exists, nor, as already intimated, do I think the general view taken in some of the cases as to the burden of proof is one which would be taken now.

Daughter's and sister's sons.

20. But whatever may be the force of restrictions from among agnates, the adoption of a non-agnate obviously rests on a very different footing. It is a violation of the cardinal principle that agnates only can succeed, and that "the land cannot leave the *gôt*." But if there could be any exception to this principle we should expect to find it made in favour of daughter's sons, who, though, in exogamous tribes, non-agnates, are as nearly related in blood as son's sons. How the Courts came to hold that this exception might be presumed to exist is clearly shown by Sir H. M. Plowden in the judgment in No. 50 of 1893 already referred to.

General presumption in the lower Courts.

There was no doubt at the commencement of our rule in the Punjab a very general feeling amongst the officers who sat as Judges in the Subordinate Courts that the claims of the daughter's son were founded "on natural justice"; there were also undoubted instances of their adoption in Sikh times, and the all-important question whether there was not an assent, express or tacit, of the agnates to the adoption, was overlooked. There was also the general guiding principle of the Courts that

the Hindu or Muhammadan Law was to be followed unless a special custom modifying or varying it was proved. Enough was already known about customary adoptions for the Courts to be able to say that the restrictions of Hindu Law did not apply to them, and the Courts at once concluded that *therefore* there were no other restrictions. All these points are fully brought out by Sir H. M. Plowden in his exhaustive examination of all the cases which have come before the Chief Court both amongst Hindu and Muhammadans. He points out that in what was regarded as the leading case, No. 50 of 1874, a case among Hindu Jats, the lower Appellate Court had ruled that the adoption of a daughter's son, who was also an only son, was presumably invalid as opposed to Hindu Law, and the party supporting the adoption had failed to prove instances of similar adoptions sufficient to establish a special custom. The Judges of the Chief Court, on the strength of the cases quoted in the judgment, held the adoption valid. Sir H. M. Plowden remarks—

Earlier Rulings of the Chief Court.

"It would have been sufficient for the decision of the case before them to say that although by Hindu Law a daughter's son, or an only son, is incapable of being adopted, it was established by these cases that by custom in the Punjab a daughter's son, or only son, is not incapable of being adopted; but, on the contrary, it is to be presumed that the adoption of such a person is not invalid, merely on the ground that he is a daughter's son or only son. There was apparently no other ground of objection in the case, and it would have followed from a ruling to the above effect that in that particular instance the adoption was valid.

"Unfortunately the judgment went further than was necessary and laid down in a positive form the far wider proposition that in the Punjab by custom the adoption of a daughter's or sister's son is presumably valid. No question had arisen, or was discussed, as to the positive conditions of the valid adoption of a daughter's son, and the important question whether such an adoption was valid in the presence of agnates, irrespective of their assent, was not even mentioned."

The cases cited in the judgment (No. 50 of 1874) in Sir H. M. Plowden's opinion warrant the proposition that in the Punjab there may be a valid adoption by a Hindu of a daughter's son, but not the far wider proposition that in the Punjab

CHAP. III. the adoption of a daughter's son is presumably valid; and proceeding to examine all the cases not cited in, or subsequent to No. 50 of 1874, which had come before the Chief Court, the learned Judge remarks that out of these twenty cases (11 Hindu and 9 Muhammadan)—

(1). All were among Jats and (except in one case from Sirsa) all the adoptions occurred in districts which were specially under Sikh rule.

(2). In four of the Hindu and in three of the Muhammadan cases the adoption occurred in Sikh times.

(3). In eight of the Hindu and in five of the Muhammadan cases, that is, in all cases subsequent to No. 50 of 1874, the latter judgment was accepted without discussion and the provisions of the *Riwáj-i-áms* were ignored. Sir H. M. Plowden says:—

"The Records of Custom in these decisions have been unfavourably commented on, with more severity than they seem to have deserved. The rule adverse to non-agnates enunciated in these records seems not to have been a new rule, but the true customary rule founded on the principle that a holding of ancestral land in a village cannot be transferred by the voluntary act of the holder to a person outside the *gôt* or genealogical family, except with the assent of those members of the *gôt* to whom, in the absence of male issue, it would revert. The frequency of adoptions of daughter's or sister's sons during Sikh times is capable of satisfactory explanation on the hypothesis that the assent of the agnates would be readily granted, and was virtually dispensed with during a period of agricultural distress. In short, the customary rule by which such adoptions stood in need of the assent of the agnates had been, to some local extent, in abeyance, but this irregular practice, tolerated under exceptional circumstances, had not been generally accepted as an established custom, under which non-agnates could be adopted, irrespective of the consent of the agnates."

After reviewing at length the Records of Custom, and four cases in which the adoption of a daughter's son by a Muhammadan was held valid by the Chief Court, the judgment proceeds:—

"In face of the records already cited or referred to it is not possible to say that these cases establish that among the land-holding tribes of the Muhammadan religion who allow adoption the adoption of a daughter's son is presumably valid.

"But I think that the Records of Custom and the knowledge derived from other sources since 1874 as to custom generally, warrant us in going further and in saying that, generally, among the landholding tribes who permit adoption in the Punjab, the adoption of a daughter's son in the presence of near agnates of the adoptor presumably needs their assent."

The parts of the judgment which immediately follow, and deal with the general nature of customary adoption, and what is necessary to establish the *factum* of it, have already been given. Returning to the adoption of daughter's sons, the learned Judge continues :—

Final Full Bench ruling No. 50 of 1893, *Punjab Record*

"The second important point to which these records testify is that, though the adoption of a non-agnate, and especially of a daughter's or sister's son, or a son-in-law, may be valid in presence of agnates, it is quite exceptionally so, more particularly in the presence of near agnates. This general remark holds good equally of Hindús and Muhammadans; but it is probable at the same time that the adoption of a daughter's son is most likely to be tolerated where the marriage rule of endogamy has been so far established that the descendants of a common male ancestor are allowed to intermarry, that is to say, where the daughter's husband may be of the same genealogical family as her father, and need not, as in the exogamous *gôt*, be of a strange family. * * * * * *

"There appears therefore no reason for supposing that, at any rate in respect to the adoption of non-agnates in the presence of near agnates, the power of adoption forms an exception to the general rule which gives the *wárisán ek jaddi* or the *karabatián* the right to control acts of a sonless owner of ancestral land detrimental to their presumptive right of succession.

"I think therefore we are fully warranted in holding generally, creed, tribe, and locality apart, that when a sonless man, in any landholding group which recognizes a power to adopt, asserts that he is competent to adopt a daughter's son, or other non-agnate, in the presence of near agnates, irrespective of their assent, the presumption at the outset is against the power, and in the absence of any admission in the pleadings in a particular case which may qualify the presumption, the form of the issue should be such as to throw the burden of proof on the person asserting the existence of the unqualified power.

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"The presumption, it may be added, is merely a general presumption to be made at the outset, irrespective of any evidence, such as the *Wájib-ul-arz*, the *Riwáj-i-ám*, or precedents, judicial or non-judicial, which may be forthcoming at a later stage of the case as evidence upon the issue previously framed with reference to the general presumption. That evidence of course may or may not be such as to shift the original burden on to the opposite party, but cannot affect the original form of the issue."

The above judgment, concurred in by Benton and Rivaz, JJ., is the final ruling of the Chief Court on the general principles of adoption, and the burden of proof, and treating the case before them in accordance with these principles, the Divisional Bench held that the adoption of a daughter's son by a Muhammadan Aráin of the Jullundur District was not valid by custom. The same result has followed in the following cases and districts :—

Later cases of such adoptions held invalid by custom.

21. In *Ludhiána*.—In No. 3 of 1894 (Benton and Rivaz, JJ.), a case among the Bhatti (Hindu) Jats of the Samrála tahsíl in which the objectors were brother's sons.

In No. 34 of 1894, already quoted, as showing that the Manj Rájpúts do not allow any adoption.

In No. 92 of 1894, Sir H. M. Plowden,* in confirming in Chambers a decree of the Divisional Judge disallowing an alleged adoption of her husband's sister's son by a widow among the Hindu Jats of the Jagráon tahsíl, observed that under any circumstances she could have had no greater power of adoption than her husband would have had when he was alive, and he could not have adopted a sister's son without the consent of his agnates.

In No. 129 of 1894 (Frizelle and Rivaz, JJ.), a case amongst the Dhillon (Hindu) Jats, the adoption was that of a sister's grandson. The objectors are described as "near agnates," but their exact relationship is not stated in the judgment.

In No. 19 of 1895 (Stogdon and Chatterji, JJ.), a case among the Dewal (Hindu) Jats, the adoption was that of a daughter's son, and the objectors were agnates in the fourth degree. The whole question of custom among the Hindu Jats of Ludhiána was thoroughly gone into and all the previous decisions carefully examined. It was found that where the decision

had been in favour of the adoption, the burden of proof had invariably been thrown on the persons objecting to it. Where there had been any real enquiry the result had been to confirm the *Riwáj-i-ám*.

In No. 58 of 1895 (Stogdon and Chatterji, JJ.), a case among the Gil Jats of the Jagráon tahsíl, the objectors were grandnephews.

In *Jullundur* and *Hoshiárpur*.—No. 64 of 1894 (Benton and Rivaz, JJ.), the case, one amongst Gorewáha (Muhammadan) Rájpúts, was not quite one of adoption, but rather of a gift to a daughter's son, who was also, the tribe being endogamous, a sister's grandson. The *Riwáj-i-ám* which disallowed such a gift or such an adoption was held to be correct. There is a note to this No. 64 of 1894 of another case in the Hindu branch of the same tribe in Jullundur, in which it was distinctly held by the same Judges that had there in fact been an adoption it would have been invalid by custom.

In another Hoshiárpur case, No. 96 of 1893, the *factum* of the adoption was held not proved.

In No. 84 of 1895 (Roe and Chatterji, JJ.), the question of adoption of a daughter's son among the Hindu Jats of the Hoshiárpur tahsíl was made the subject of a very full enquiry on remand. The *Riwáj-i-ám* allowed the adoption but the enquiry showed that the reason of the entry was merely that the local Courts, on the strength of a few cases which had occurred in Sikh times, and their own belief that such adoptions should be presumed to be valid, had uniformly upheld them, and the tribal representatives present when the *Riwáj-i-ám* was prepared therefore stated that they were allowed. Most of these representatives—and the great majority of the Hindu Jat lambardárs—when examined during the enquiry on remand declared emphatically that true custom, as recognized not by the local Courts but by the tribes themselves, did not allow such adoptions. The instances given in support of them were quite insufficient, and the decision of the Chief Court was that they were opposed to custom.

In *Lahore*.—In No. 47 of 1895 (Rivaz and Chatterji, JJ.), a case among Sindhú Jats, in which the adoption of a daughter's son was held invalid, the exact relationship of the agnates who objected is not stated.

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In *Amritsar.*—In No. 131 of 1893, I upheld in Chambers a decision of the Divisional Judge, who had found after a very full enquiry that among the Aulakh (Hindu) Jats of the Ajnála tahsíl, custom did not allow either the adoption of, or gifts to, a daughter's son.

In *Gurdáspur.*—In No. 39 of 1894 (Plowden and Stogdon, JJ.), a case among the Bhatti (Muhammadan) Jats of the Batála tahsíl, the objector was a nephew and the decision was the same.

In *Siálkot.*—In No. 30 of 1894 (Benton and Rivaz, JJ.), a case among the Anand Khatrís in the Pasrúr tahsíl the decision was the same.

In *Gujrát.*—In No. 102 of 1893 (Frizelle and Rivaz, JJ.), a case among the Paswál Gujars of the Khárián tahsíl, in which the objectors were agnates in the fourth and fifth degree, it was held that custom allowed neither the adoption of, nor gifts to, a sister's son.

The same was held in

No. 140 of 1893 (Plowden and Roe, JJ.), a case among the Sidh Jats (an exogamous tribe) of the same tahsíl, in which the nearest objectors were first cousins. The case was one of a gift to a sister's grandson, but the whole question of custom is fully gone into by Sir H. M. Plowden, and the precedents, judicial and non-judicial, are carefully examined. These showed that whilst the position of the sons of a daughter who with her husband had resided in her father's house from the time of her marriage was highly favoured, and they were sometimes allowed to succeed, where there had been from the first a clear intention that they should do so, even without a special act of adoption or gift, in the case of other daughter's sons not only a special act of adoption or gift, but also the assent of near agnates was necessary, and the position of sister's sons was even weaker than this. The correctness of the decision in No. 104 of 1891, in which the adoption of a wife's sister's son was upheld, was doubted.

In *Ráwalpindi.*—In No. 86 of 1894 (Benton and Rivaz, JJ.), it was held that among the Sayads custom did not allow the adoption of, or the gift of the entire estate to, a daughter's son, who was also a grand-nephew, in the presence of nephews.

Held valid.

22. The only cases, since No. 50 of 1893, in which the adoption of a daughter's or a sister's son has been held valid are—

No. 113 of 1893, amongst Zargars of Hoshiárpur, in which Sir H. M. Plowden, whilst apparently of opinion that village artisans were governed by the same custom as the agricultural tribes, found as a fact that the assent of the agnates had been given.

No. 71 of 1895 (Stogdon and Bullock, JJ.), a case between Moghals, owning land but residing in the town of Patti in Kasúr, Lahore; agnates in the fifth degree contested an appointment as heir of, or gift to, his daughters by a sonless man made publicly shortly before his death. The Moghals are endogamous, and the husband of one of the daughters was in fact as near an agnate as the plaintiffs. The power of gift or appointment as heir was supported by the *Riwáj-i-ám* and several instances, and it was held proved both by the lower Courts and the Chief Court.

Adoption of strangers.

23. If custom generally forbids the adoption of non-agnates who, like daughter's or sister's sons, are blood related, *a fortiori* does it forbid the adoption of those who are not so related. A step-son as such is obviously in no better position than any other stranger in blood, and his adoption has been found invalid:

In No. 48 of 1894 (Roe and Stogdon, JJ.), a case among the Maru (Hindu) Jats of Ludhiána, in which the objecting agnates were the great-great-grandsons of a common ancestor, and the step-son, though said to be of the same *gôt*, could trace no agnatic relationship;

And in No. 122 of 1894 (Stogdon and Channing, JJ.), a case among the Aulakh Jats of Amritsar in which the objectors were agnates in the seventh degree;

In No. 93 of 1893 (Frizelle and Rivaz, JJ.), a case among the Jagi Rájpúts of Gurdáspur, the adoption of a foundling, tribe unknown, was held valid on the ground that it had been expressly assented to by the agnates whose assent might have been necessary at the time it was made, and that it could not be declared invalid merely on the objection of a son born after the adoption.

Power of adoption by widow.

24. The power of adoption by widows has not formed the subject of any important decision by the Chief Court, and it is a point on which custom, within certain limits, would naturally vary. She can of course adopt with the consent of the agnates. Whether, without that consent, she can adopt (1) with,

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or (2) without, the express authority of her husband, must depend on the custom of the particular tribe. It is obvious, as pointed out in No. 92 of 1894, that under no circumstances could her power be greater than that of her husband, and it is likely to be considerably less. I should say myself that the presumption is that a widow cannot adopt, without the consent of the agnates, even when she has the express authority of her husband. And apparently this would have been found to be the case in No. 92 of 1894 had it been necessary to go into the question. On the other hand, in No. 182 of 1889, already quoted, the widow was found to have the power to adopt a near agnate without the consent of other agnates. But this finding was not based on any general presumption, but on the evidence in that particular case.

ii.—Gifts.

Close connection between adoption and gift.

25. I have already remarked that, speaking generally, a gift as understood by Customary Law is merely the means by which the tribes who do not recognize adoption *eo nomine*, permit under certain circumstances a sonless man to divert the succession to his estate from the natural heirs in favour of some near relative who has rendered, or is expected to render, service, and who would be adopted, if adoption were recognized. It is, however, by no means unfrequent to find even in tribes which recognize adoption, gifts made in ratification of an adoption usually, I fear, of a pretended one. It is indeed the most common mode of attempting to evade the Customary Law which restricts the power of selection and insists most strongly on a public act of adoption, for the sonless man to execute a deed of gift, in which a previous adoption is falsely recited. It thus happens that in most of the cases which have come before the Courts the customs regulating adoption and gifts have had to be considered together, and many of the cases to which I am about to refer will be found to have been already noticed under the head of Adoption.

The same general principle applies to both.

26. The remarks of Sir H. M. Plowden already quoted show that the custom with regard to all alienations of an ancestral property (except for necessity) rests on the same general principle, that the holder for the time being cannot by his own voluntary act, under whatever form he may clothe his act, whether he calls it an adoption, a gift, or a distribution, or a sale, divert the succession from his natural heirs without their consent. And just as

in the case of an adoption the Customary Law insists on a definite public act of adoption, in the presence of, or with full notice to, the brotherhood or at any rate the agnates interested, so also in the case of gifts it insists on a delivery of possession. In nearly all the Records of Custom where a gift is allowed, the condition is laid down that the donor must give possession during his own lifetime. This condition has invariably been regarded by the Court as essential, and where it has not been complied with gifts, which would otherwise have been supported by custom, have been disallowed. Nos. 112 of 1889, 36 of 1891 (in which the meaning of "possession" is fully discussed), and 15 of 1895 are, amongst other cases, clear authority on this point, and in No. 33 of 1891 (Plowden and Benton, JJ.), it was held, as had been previously held in No. 112 of 1889 (Plowden and Tremlett, JJ.), that power to make a gift "during lifetime" does not cover a gift made during lifetime, but intended to take effect only after the donor's death.

Necessity for delivery of possession.

27. With these general remarks, I will proceed to notice the various cases of gift reported in the *Punjab Record* since 1887. They may be classified, like the adoptions, as—

Review of reported case in detail.

(1). Gifts to an agnate in the presence of—
  (*a*) nearer agnates,
  (*b*) agnates equally near ;
(2). Gifts to relatives through females (daughters or sisters, or their husbands or sons) ;
(3). Gifts to strangers ;

and the main point to be noted is of course whether these have been held valid or invalid. But it will be more convenient in the first place to review the cases as a whole, district by district, and afterwards to consider them by classes. I shall follow the same order as in adoptions.

28. In the districts which have been longest under British rule, and where the land is mainly held by tribes who were with few exceptions originally Hindús, and who are mostly so still, the cases are very few.

Delhi.

In *Delhi*.—In No. 32 of 1892 (Rivaz and Stogdon, JJ.), it was held that by the custom of the Sayads of the Balabgarh tahsíl, a gift to a daughter in the presence of the descendants of the donor's grandfather was invalid, and

In No. 25 of 1892 (Frizelle and Rivaz, JJ.), a gift by a Gathwál Jat, to a stranger in blood in the presence of a nephew was also held invalid by custom.

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Rohtak. In *Rohtak.*—In No. 95 of 1891 (Benton and Rivaz, JJ.), a gift by a Hindu Jat of the Sámpla tahsíl to a step-son in the presence of descendants of the donor's great-grandfather was held invalid.

Sirsa. In *Sirsa.*—No. 101 of 1892 (Stogdon and Bullock, JJ.), was a case of a gift, by a Thurar (Muhammadan) Jat of the Sirsa tahsíl, of a portion of his estate to a brother's son and grandson in the presence of another brother and brother's son. The Court, considering (apparently erroneously according to the later Full Bench ruling No. 73 of 1895) that the principles laid down in No. 107 of 1887 did not apply to the Sirsa District, and interpreting the *Riwáj-i-ám* as allowing the gift, held the gift valid.

Hissár. In *Hissár.*—In No. 63 of 1890 (Powell and Roe, JJ.), a gift by a Ghorewál Jat to his daughter in the presence of agnates of the fifth degree was held valid. But in this case the agnates, though apparently they resided and owned land in the same village, failed to show that the land had ever been held by any common ancestor of themselves and the donor, and this was the basis of the decision.

Firospur. 29. In *Firozpur.*—In No. 111 of 1888 (Plowden and Burney, JJ.), a gift by an Aráin to a daughter's son in the presence of a brother and brother's son was held invalid.

In No. 82 of 1892 (Stogdon and Bullock, JJ.), a gift, by a Sidhu Jat, of the Moga tahsíl, of half his ancestral land to a grandson, to the exclusion of a son, the donee's father, was held invalid.

No. 120 of 1893 (Plowden and Roe, JJ.), was a somewhat similar case amongst Aráins. Strictly speaking, it was a case of bequest by a father favouring one son to the prejudice of another son, but the power of the father to make such a distribution of ancestral land during his own lifetime was also considered and held not proved.

Karnál. 30. In *Karnál.*—In No. 127 of 1894 (Roe and Frizelle, JJ.), a gift by a Gujar to a mother's brother's child would have been held invalid if it had been objected to by a near agnate, but it was held that the widow, who was sufficiently provided for out of the rest of the estate, had no power to object.

In *Umballa.*—No. 68 of 1888 (Rattigan and Roe, JJ.), was really a case of bequest by will, by a Dhanni Jat, in favour of a widowed daughter who had returned to reside permanently with her father and had rendered him service for years. The question whether there was any distinction between the power of gift and the power of bequest was not really considered, the transaction was treated as an ordinary gift, and it was upheld on the ground that, as the *Wájib-ul-arz* expressly allowed a gift to a daughter's son if there were no brother or brother's son, and as the objecting agnate was not a brother or brother's son, it was for him to prove the gift invalid by custom, and he had failed to do so. On the other hand Umballa.

In No. 156 of 1890 (Stogdon and Beachcroft, JJ.), a gift to, under the form of an adoption of, a wife's brother's son by a Raihala Jat, was declared invalid, although the *Wájib-ul-arz* allowed gifts to a daughter's son; and in.

No. 73 of 1891 the same Judges held a gift by a Tawani Rájpút to a daughter's son in the presence of a nephew invalid.

In No. 90 of 1893 (Plowden and Benton, JJ.), a case amongst the Jadubansi (Hindu) Rájpúts, it was held that a sonless proprietor cannot distribute his estate, in whole or in part, unequally amongst his agnates of the same degree of relationship.

In No. 24 of 1892 (Benton and Stogdon, JJ.), a gift to a stranger by an agricultural Brahmin of the Jagádhri tahsíl was held invalid on the objection of near agnates, whose ancestor had joined the donor's ancestor in founding the village, although no common ancestor had ever held the land.

In *Ludhiána.*—In No. 36 of 1895 (Rivaz and Chatterji, JJ.), a gift by an Aráin to a daughter's son in the presence of a brother's son was held invalid after a very complete review of previous decisions. Ludhiána.

31. In *Jullundur.*—In No. 92 of 1888 (Powell and Roe, JJ.), a gift by an Aráin to a daughter's son was upheld on the ground that the agnates had in fact consented to it. Jullundur.

In No. 19 of 1890 (Frizelle and Rivaz, JJ.), in which a gift by a Kang Jat to one nephew was objected to by another nephew, it was held that as the donee had long resided with, and rendered service to the donor, it was for the objector to prove that the gift was invalid by custom, and he had failed to do so. Similarly, in

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No. 85 of 1889 (Powell and Frizelle, JJ.), where a Dhanni Jat had made a gift of a moderate portion of his estate to a step-son who had long resided with him and managed his estate for him, the *onus* was thrown on the objector with the same result. This was also the case in No. 95 of 1892 (Benton and Rivaz, JJ.), another case of a gift to a step-son by a Bharar (Hindu) Jat, where the objecting agnates were only related in the sixth degree, and the village pedigree table showed that the proprietary body was made up of groups of various tribes, and that alienations had been frequent even in the objector's group. On the other hand

In No. 95 of 1890 (Stogdon and Beachcroft, JJ.), a gift, by a Ghorewáha Rájpút, of a portion of his estate to his wife's brother in the presence of sons was held invalid; and

In No. 64 of 1894 (Note) Benton and Rivaz, JJ.), another case among the same tribe, a gift to a daughter's son was held invalid in the presence of agnates of the fourth degree.

In No. 145 of 1894 (Stogdon and Chatterji, JJ.), it was held that, although in other cases referred to a gift to an agnate had been held valid in the presence of nearer agnates, yet a gift to a stranger was invalid. The case was among the Náru Rájpúts.

Hoshiarpur.

In *Hoshiárpur*.—Dispositions of property in favour of an agnate in the presence of other agnates equally or more nearly related have been upheld in the following cases:—

In No. 18 of 1890 (Frizelle and Rivaz, JJ.), a case among Mahtans, where the donee was a nephew who had long resided with the donor and had managed his estate for him, the Court threw the *onus* on the objector, another nephew, and held that he had failed to discharge it.

In No. 113 of 1891 (Frizelle and Benton, JJ.), a case among Ghorewáha Rájpúts. Here again the donee was a nephew who had long resided with the donor, and the Court following Nos. 173 and 174 of 1883 and No. 152 of 1884, placed the *onus* on the objector, another nephew.

In No. 116 of 1894 (Plowden, J.), a case among the Gil Jats. Here too the donee was an agnate connected with the donor by the special tie of long residence and service, and it was laid upon the objecting agnates to prove the gift invalid.

On the other hand, dispositions of ancestral land in favour of one agnate in the presence of other agnates equally related have been held invalid in the following cases:—

In No. 90 of 1891 (Benton and Stogdon, JJ). This was a case among Bhatti (Hindu) Rájpúts, and was one of disposal by will. The Court drew a clear distinction between the power of disposal by will and the power of gift, and without discussing the latter power held that the existence of the former power was not proved ; but

In No. 115 of 1891 (Benton and Rivaz, JJ.), a case amongst Mahtans, in which a proprietor had divided his estate into four shares, and given one share each to his three sons, and reserved the fourth share for himself, and had subsequently bequeathed this reserved share to one grandson exclusively, the Court, whilst recognizing a distinction between gifts and bequests, refused to give effect to the will on the ground that to do so would be to recognize the power of a proprietor to make an unequal distribution of his estate between his sons and grandsons, which power did not exist.

In No. 138 of 1892 (Benton and Rivaz, JJ.), a case, among the Jats of the Hoshiárpur tahsíl, of an unequal distribution by a father amongst his sons and grandsons, the Court held that no power to make this was proved.

In No. 71 of 1893 (Frizelle and Rivaz, JJ.), a case among Hindu Rájpúts of the Una tahsíl. Here a gift (in the form of a gratuitous creation of rights of occupancy) in favour of a distant agnate in the presence of nearer agnates was held contrary to custom.

In No. 110 of 1894 (Stogdon and Chatterji, JJ.), a case among the Náru (Muhammadan) Rájpúts, a gift to a sister's son, who was also an agnate, to the prejudice of agnates equally near, was held invalid.

In No. 72 of 1895 (Rivaz and Chatterji, JJ.), another Náru Rájpút case, it was held that a father cannot, except for very special reasons, make an unequal distribution of his estate amongst his sons.

There have been no cases in which gifts to relations through females have been upheld, and the cases in which they have been set aside are the following :—

No. 117 of 1892 (Stogdon and Bullock, JJ.), a case, among Mahtans, of a gift to a son-in-law objected to by descendants of the donor's great-grandfather. It was also pointed out that

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No. 64 of 1894 (Benton and Rivaz, JJ.), a case among the Goreváha (Muhammadan) Rájpúts of the Garhshankar tahsíl, of a gift to a sister's and daughter's son, objected to by agnates of the sixth degree. The actual ruling was that the gift was invalid in the absence of an adoption, but it was not decided whether or not it would have been valid had an adoption been proved.

No. 110 of 1894 (Stogdon and Chatterji, JJ.), a case among the Nárú (Muhammadan) Rájpúts, of a gift to a sister's son, who was also an agnate, in the presence of nearer agnates.

No. 84 of 1895. This case has been fully noticed under the head of "Adoption."

There are no cases in which gifts to a stranger have been upheld, and in the following cases they have been disallowed :—

No. 118 of 1891 (Benton and Rivaz, JJ.), a gift, by a Kandal (Hindu) Rájpút of the Una tahsíl, of a small portion of his estate to a stranger objected to by agnates of the seventh degree.

No. 83 of 1892 (Benton and Rivaz, JJ.), a gift by a Jaj Jat to a step-son of another *gôt* objected to by a brother and nephew. It was also held that his adoption would have been invalid.

No. 98 of 1892. A case before the same Judges, precisely similar to the last.

Amritsar. 32. In *Amritsar* there have been no cases regarding gifts to agnates. Gifts to relations through females have been held valid in :—

No. 140 of 1894 (Benton and Bullock, JJ.), in which a gift, by a Manj Rájpút of the Tarn Táran tahsíl, to a sister's son who was also a son-in-law, was upheld, although the objector was a nephew, on the ground that, although the *Riwáj-i-ám* disallowed such gifts in other parts of the district, it expressly sanctioned them in the Tarn Táran tahsíl, and precedents of decided cases supported the *Riwáj-i-ám*.

No. 5 of 1895 (Roe and Chatterji, JJ.), a case among the Pathans of the Ajnála tahsíl. This was a case of a gift by a widow, and although the general power of gift was referred to incidentally, the ruling merely was that a daughter could not control its exercise.

In the following cases such gifts have been declared invalid :—

In No. 131 of 1893, a case among the Aulakh Jats in the Ajnála tahsíl, I confirmed under Section 551, Civil Procedure Code, a decision by the Divisional Judge, based on a full enquiry into custom, that a gift cannot be made to a daughter's son in the presence of agnates of the fourth degree.

In No. 15 of 1894 (Benton and Rivaz, JJ.), a case among Patháns of the same tahsíl, it was held that a gift could not be made to a daughter's son in the presence of first cousins.

The only cases regarding gifts to strangers are No. 198 of 1889 (which will be discussed fully under the head of "Wills") in which a gift by will was upheld, and No. 11 of 1890 in which I confirmed under Section 551, Civil Procedure Code, a decision upholding a gift, by a Hindu Jat of the Tarn Táran tahsíl, of a small piece of land to his Parohit for religious purposes.

In *Gurdáspur* there are no cases regarding either gifts to agnates or to strangers. Gifts to relations through females were discussed in Gurdáspur.

No. 60 of 1889 (Roe and Frizelle, JJ.); this was really a case of succession among the Sayads of the Shakargarh tahsíl, and it was held that a daughter was not excluded by a second cousin once removed.

In No. 112 of 1889 (Plowden and Tremlett, JJ.), a case, among the Gujars of the same tahsíl, of a gift to a daughter's son, there are indications in the judgment that the gift might have been upheld if it had been accompanied by delivery of possession, but the ruling merely was that it was invalid because possession was not given.

In No. 65 of 1892 (Roe and Stogdon, JJ.), a case among Gujars, it was held that a gift to a daughter and her son was invalid in the presence of agnates of the fourth degree.

33. In *Lahore*, the only cases are— Lahore.

No. 128 of 1888 (Burney and Tremlett, JJ.), in which a bequest by a Dhanva Jat of the Kasúr tahsíl in favour of a distant agnate in the presence of nearer agnates, was declared invalid on the ground that a similar gift would have been opposed to custom.

No. 71 of 1895 (Rivaz and Bullock, JJ.), this was a case among the Moghals of Patti, in the Kasúr tahsíl, in which a father, a few days before his death, had publicly recorded

CHAP. III. in the Patwárí's diary, a gift of his land to his four daughters, one of whom was married to an agnate as nearly related as the plaintiff, who was an agnate of the fifth degree. The transaction, though spoken of in the judgment as a bequest, was treated as one of gift, or appointment of heir. It was supported by the *Riwáj-i-ám* and by instances of similar gifts or appointments. It was held that it lay on plaintiff to prove such an alienation invalid, and that he had failed to do so.

Gujránwála. In *Gujránwála* there are no cases of gifts being upheld.

In No. 110 of 1893 (Frizelle and Benton, JJ.), a gift, by a Varáitch (Hindu Jat), to a descendant of a great-grandfather, was declared invalid in the presence of a descendant of the grandfather.

In No. 34 of 1891 (Benton and Rivaz, JJ.), a gift, *by will*, by a Chíma Jat, to a sister's son and a step-son in the presence of agnates of the sixth and seventh degree, was declared invalid.

The distinction between gifts and bequests was recognized, but it was also found that there was no power to make such a gift; and

In No. 135 of 1894 (Frizelle and Benton, JJ.), another Chíma Jat case, a gift to a sister's son in the presence of agnates of the sixth degree was found invalid.

Siálkot. In *Siálkot* the cases are more numerous. There are none in which gifts to agnates in the presence of other agnates have been upheld; but

In No. 36 of 1888 (Plowden and Burney, JJ.), a gift, under the form of a sale, by a Varáitch Jat, to one of several heirs was held invalid; but

In No. 79 of 1891 (Benton and Stogdon, JJ.), a case among the Ghuman Jats, in which the objecting agnates were in the eighth degree, and were of a different religion, and of *a different village community*, it was held that it lay upon them to prove that the gift to an agnate of the same religion and village as the donor was invalid by custom, and that they had failed to do so.

Gifts to relations through females have been upheld:

In No. 20 of 1890 (Benton and Rivaz, JJ.), a case among the Bajwah Jats of a gift to a sister's son. The objecting agnates were of the tenth degree and the *onus* of proving the gift invalid was thrown on them.

In No. 10 of 1892 (Frizelle and Roe, JJ.), a case, among the Kakezáis (Patháns) of the Pasrúr tahsíl, of a gift or bequest to a daughter objected to by a brother's son. The *Riwáj-i-ám* mentioned the parties village as an exception to the general rule, and allowed both the father and his widow to make a gift to a daughter when there were no sons, and gave instances of such gifts.

In No. 93 of 1894 (Stogdon and Channing, JJ.), in a case among Awáns, it was held that a gift was allowed by custom to a *khánadamád*, who had given up all claim to inherit in his own family.

In No. 126 of 1894 (Plowden and Benton, JJ.), another Awán case, the ruling really only is that when a gift has been allowed, on the donee's line dying out, the land reverts to the agnates of the donor.

On the other hand, the following gifts have been declared invalid :—

In No. 42 of 1890 (Benton and Frizelle, JJ.), a gift, by a Ghuman Jat, to a father's brother's daughter, in presence of agnates of the third and fourth degrees.

In No. 33 of 1893 (Plowden, J.), a gift, by a Barrar Jat, to a brother's daughter, who had resided with him and rendered him service.

In No. 11 of 1894 (Benton and Rivaz, JJ.), a Barrar Jat case from the Ráyá tahsíl, a gift to a daughter whose husband was a *khánádamád* objected to by descendants of the donor's grandfather was disallowed.

In No. 17 of 1894 (Benton and Rivaz, JJ.), it was held that a Puriwál Jat of the Daska tahsíl cannot make a gift to a daughter's husband without the consent of the *wárisán yak jaddi*, who include the descendants of a co-founder of the village, even though the land was never held by a common ancestor.

The only case of a gift to a stranger is

No. 15 of 1888 (Rattigan and Roe, JJ.), in which it was held that a gift to a stranger by a Minhás Rájpút was invalid.

34. In *Gujrát* there are no cases in which gifts to agnates have been upheld. They have been disallowed in Gujrát.

No. 8 of 1891 (Plowden and Benton, JJ.), a case of a gift to one nephew objected to by a brother and another nephew,

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among the Kathána (Muhammadan) Gujars, of the Khárián tahsíl. In the judgment the previous cases are very fully examined.

In No. 79 of 1893 (Frizelle and Rivaz, JJ.), a case, among Aráins, of a gift to, or adoption of, a first cousin, in the presence of a brother's son.

In No. 81 of 1893 (Plowden and Roe, JJ.), a case, among the Varáitch Jats of the Phálian tahsíl, of a gift to one brother, purporting to be made for services rendered, to the exclusion of the sons of another brother. The case was rather one of a bequest; but the power of gift was fully considered, and it was held that it was not proved, and that "still less was there a power of bequest."

Alienations in favour of relations through females have been upheld in the following cases:—

No. 125 of 1890 (Plowden and Rivaz, JJ.), a case, among the Chib Rájpúts, of a gift of *self-acquired* property to a daughter's son objected to by first cousins.

No. 109 of 1891 (Rivaz and Stogdon, JJ.), a case, among the Gujars of the Khárián tahsíl, of a gift to a daughter whose husband was a *khánadamád*.

No. 96 of 1892 (Benton and Rivaz, JJ.), a case among Muhammadan Jats of the Phálián tahsíl. The general principle that gifts to daughters whose husbands are *khánadamáds* are sanctioned by custom is affirmed, but the actual ruling is that other gifts are invalid. The ruling in No. 122 of 1892, by the same Judges, in a case among Muhammadan Gujars of the Khárián tahsíl, was just the same.

In No. 129 of 1893 (Roe and Bullock, JJ.), a case among Muhammadan Jats, the ruling merely is that the fact that a gift to a daughter has been allowed does not give her any power of gift.

In No. 134 of 1893 (Plowden and Roe, JJ.), a case among the Gujars of the Awana *gôt*, in the Khárián tahsíl, it was held that where a daughter and her husband reside continuously with her father, and he puts them in possession they will succeed, but not otherwise; but in

No. 50 of 1894 (Plowden and Stogdon, JJ.), a case among the Bangial Jats, the gift was upheld, although the daughter

and her husband had not been resident from the very time of her marriage.

In No. 134 of 1894 (Frizelle and Benton, JJ.), a case among Varáitchs, the question was not the validity of the gift to a daughter whose husband was a resident son-in-law, but only of the right of the husband to succeed where such a gift had already been allowed. It was held that he was entitled to hold for life.

In No. 31 of 1895 (Rivaz and Chatterji, JJ.), a case among Gujars, it was held that where it was proved that a sonless man had taken his married daughter and her husband to reside with him with the intention that they should succeed, they would succeed even without proof of a definite act of gift.

But the following gifts have been set aside :—

In No. 53 of 1889 (Roe and Frizelle, JJ.), a gift by a Muhammadan Gujar to a sister's son in the presence of first cousins.

In No. 128 of 1890 (Plowden and Benton, JJ.), a case, among Lálá Jats, of a gift to a sister's son in the presence of a widow, brother and nephew. The plea that the donee was a *quasi* resident son-in-law was disallowed.

In No. 92 of 1891 (Rivaz and Stogdon, JJ.), a gift by a Pránth (Muhammadan) Jat to a sister's son to the prejudice of brother's sons.

In No. 129 of 1892 (Stogdon and Bullock, JJ.), a similar gift among Gondals of the Phálián tahsíl.

In No. 102 of 1893 (Frizelle and Rivaz, JJ.), a gift by a Paswál Gujar of the Khárián tahsíl, to a sister's son to the prejudice of agnates in the fourth and fifth degrees.

In No. 140 of 1893 (Plowden and Roe, JJ.), a case, among the Sídh (Muhammadan) Jats of the Khárián tahsíl, of a gift to a sister's son in the presence of first cousins. It was also held that his adoption would have been invalid.

In No. 14 of 1895 (Frizelle and Chatterji, JJ.), a gift to a paternal aunt's son by a Muhammadan Gujar of the Khárián tahsíl, was held invalid in the presence of agnates in the sixth degree.

As regards gifts to strangers—

No. 104 of 1891 (Frizelle and Benton, JJ.), was treated as an adoption of a sister's son by a Bhatti (Muhammadan) Jat of

CHAP. III. the Khárián tahsíl, and the adoption was upheld, that is, a gift was held valid because the previous adoption was held valid, but the correctness of this ruling was questioned in a later case.

Gifts to step-sons were disallowed in :—

No. 141 of 1889 (Burney and Powell, JJ.), a case among Varáitchs in which the objectors are described only as "near agnates;" and in

No. 120 of 1892 (Benton and Stogdon, JJ.), in a Gujar case in which the objectors were nephews.

Jhelum. 35. In *Jhelum.*—As regards gifts to agnates—

In No. 22 of 1892 (Stogdon and Beachcroft, JJ.), a case among Tarkháns of a gift to a brother objected to by another brother and brother's son, the *onus* was placed on the objector, and it was held that they had failed to discharge it. But in No. 7 of 1891 (Plowden and Roe, JJ.), an Awán case, it was held that a father had no power to make an unequal distribution of his estate among his sons, and the same was held in

No. 24 of 1891 (Plowden and Benton, JJ.), a case among agricultural Khatrís. It was, however, indicated in the last case that the father might have kept for himself a share equal to a son's share and have given it to any son he liked.

In No. 59 of 1895 (Stogdon and Chatterji, JJ.), a case among Chauhán Rájpúts of the Chakwál tahsíl, a gift to a nephew to the prejudice of other agnates was held invalid.

Gifts to relations through females have been upheld.

In No. 132 of 1890 (Stogdon and Beachcroft, JJ.), a case among Kandaya Rájpúts of a gift to a married daughter objected to by a first cousin once removed. The Court placed the *onus* on the objector.

In No. 108 of 1891 (Rivaz and Stogdon, JJ.), a case among Chauhán (Muhammadan) Rájpúts of the Jhelum tahsíl, of a gift to a son-in-law, in the presence of nephews.

In No. 15 of 1895 (Roe and Rivaz, JJ.), a case among Awáns of the Talagang tahsíl, there was some indication that a gift to a daughter and her son in the presence of nephews would have been upheld if it had been accompanied by possession, but the decision only was that the gift was invalid as there had been no delivery of possession.

The following gifts have been disallowed as opposed to custom :—

In No. 21 of 1893 (Benton and Rivaz, JJ.), a gift, by will, by a Chármehal, of his whole estate to a childless wife, in the presence of another wife and her sons.

In No. 107 of 1893 (Plowden and Benton, JJ.), a gift, by a Kaniál (Muhammadan) Jat of the Jhelum tahsíl, to his daughter's husband, who was also his sister's son, was held invalid in the presence of nephews, because although the *Wájib-ul-arz* was in its favour, there were no precedents to support it.

In No. 108 of 1893 (Frizelle and Benton, JJ.), an Awán case, a gift, by will, in favour of a daughter in the presence of a brother's son, was held invalid.

In No. 81 of 1894 (Benton and Rivaz, JJ.), another Awan case, a gift of half the estate to a daughter in the presence of sons was disallowed.

There are no instances of gifts to a stranger being upheld, and in

No. 94 of 1891 (Roe and Benton, JJ.), in a case among the Khokars, a gift to a stranger was disallowed in the presence of "near agnates."

In *Ráwalpindi.*—As regards gifts to agnates— Rawalpindi.

In No. 125 of 1893 (Frizelle and Benton, JJ.), a case among Ghebás of the Fatehjhang tahsíl, it was held that a father had power, in distributing his estate among his sons, to give one more than his ordinary share. But in

No. 43 of 1891 (Plowden and Benton, JJ.), a Gujar case, it was held that he cannot give his whole estate to one son, or completely disinherit any son; and in No. 52 of 1892 (Benton and Rivaz, JJ.), an Awán case, it was held that an estate cannot be gifted to a grandnephew to the prejudice of a brother.

The same was held in No. 32 of 1893 (Plowden, J.), a case among the Mangial (Muhammadan) Rájpúts in which the donee was a nephew, and in No. 86 of 1894 (Benton and Stogdon, JJ.), a Sayad case in which the donee was both a grandnephew and a daughter's son.

In No. 107 of 1894 (Stogdon and Chatterji, JJ.), it was held that among the Awáns of the Attock tahsíl a father cannot make an unequal distribution of his property among his sons.

There are no cases in which gifts to relations through females have been upheld.

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No. 86 of 1894, already quoted, is an instance of a gift to, and an alleged adoption of, a daughter's son, who was also a grandnephew in the male line, being held invalid on the objection of a brother's son.

In No. 136 of 1888 (Rattigan and Roe, JJ.), a case, among Kahárs of the Fatehjhang tahsíl, of a *will* in favour of a daughter's son to the prejudice of a brother's son, it was held that there was no custom in favour of wills, and also that such a gift would have been invalid.

There are no cases of gifts to strangers; but in No. 97 of 1892 (Stogdon and Bullock, JJ.), a bequest by a Gujar in favour of a stranger was treated as an ordinary gift and held invalid in the presence of a brother's son's son.

Shahpur.

In *Shahpur.*—In No. 36 of 1891 (Benton and Rivaz, JJ.), an Awán case, the judgment indicated that a gift to an agnate, or a daughter's son, would have been held valid, if *accompanied by possession*, but the actual decision is that the gift was invalid as there was no delivery of possession.

In No. 133 of 1890 (Stogdon and Beachcroft, JJ.), a case among Talokás, a very small tribe, of the Khushab tahsíl, a gift to a married daughter objected to by an agnate, whose degree of relationship is not stated, was held valid on the strength of an entry in the *Wájib-ul-arz*, authorizing a gift of *kuch hakíat* which was interpreted as including a gift of the entire estate.

In No. 33 of 1891 (Plowden and Benton, JJ.), an Awán case, the judgment indicates that the gift, one to a sister's son objected to by an agnate (degree not stated), would have been upheld if it had been made by the donor, and intended to take effect, during his lifetime, but the actual ruling is that it was invalid, as custom recognizes no power to make a bequest, or gift to take effect after death.

36. The cases from the frontier districts are very few.

Hazára.

In *Hazára.*—In No. 33 of 1893 (Plowden and Roe, JJ.), it was held that among the Swátís a father may make an unequal distribution of his property among his sons by different wives.

Pesháwar.

In *Pesháwar.*—In No. 157 of 1890 (Stogdon and Beachcroft, JJ.), it was held that among the Patháns of Dáúdzai and Doába, a father may, in the absence of male issue but in the presence of near agnates, make a gift (with possession) of his entire estate to a daughter or her sons.

In *Dera Ismáil Khán.*—The judgments both in No. 69 of 1890 (Plowden and Frizelle, JJ.), a Koreshi case, and in No. 76 of 1892 (Benton and Stogdon, JJ.), a case among Muhammadan Jats, indicate that a gift to a daughter or her sons, if accompanied by possession, would be valid, but the ruling is only that there is no power of gift by will. Dera Ismáil Khán.

In *Jhang.*—In No. 93 of 1892 (Frizelle and Bullock, JJ.), it was held that, among the landowning Khatrís of the Shorkot tahsíl, a gift cannot be made to a daughter's son in the presence of a brother's son. Jhang.

37. Taking the above cases by classes, the conclusions would appear to be these— General result.

I.—In only two cases, one in Ráwalpindi and one in Hazára, has it been held that a father may make an unequal distribution of his property among his sons. In many other cases it has been held that he cannot do so.

II.—In other cases where gifts to agnates have been disputed, the gift has been upheld in 7 and disallowed in 25 instances. In almost all the cases in which the gift has been upheld, the *onus* has, for special reasons, such as long residence with, or rendering service to, the donor by the donee, been thrown on the objector.

III.—Gifts to daughters or sisters, or males related through them, have been upheld in 27 cases (including in these the cases in which the judgment has favoured the power of gift incidentally, though the actual decision has been on some other point) and disallowed in 32. Of the 27 cases in which the gift has been upheld 9 are from the Gujrát, 4 from the Siálkot and 3 from the Jhelum Districts, and are nearly all cases of gifts, by Muhammadans, to daughters who with their husbands have been taken to reside permanently with the donor. Five other cases are from frontier districts where custom may be said generally to permit gifts, *if accompanied with possession,* to daughters in the absence of male issue, or at any rate in the absence of near agnates. In the other six cases there were special reasons

for upholding the gift, or for throwing the *onus* on the objector; it can hardly be said that in any of them it was proved affirmatively that by custom the gift was valid.

IV.—Gifts to strangers were upheld in 5 and disallowed in 14 cases. The 5 cases (2 in Jullundur, 2 in Amritsar, and 1 in Gujrát) were all very special ones, and the correctness of the decision in the Gujrát case was questioned in a later judgment.

iii.—Wills.

Wills opposed to Customary Law.

38. I have given in my remarks on the *Riwáj-i-áms* my reasons for saying that any power of altering the devolution of ancestral property by will is not only unknown, but is necessarily opposed, to the fundamental principles of the Customary Law. The decisions regarding gifts which have just been reviewed furnish another reason for this opinion, *viz.*, that it has been invariably found essential to the validity of a gift that it should be accompanied by a delivery of possession and this of course is impossible in the case of a mere gift by will. The only authority for an opposite view is No. 198 of 1889 (Stogdon and Chatterji, JJ.), the facts of which were very peculiar, and may possibly have influenced the decision. The donor was an Awal Khatri, though an agriculturist, of the Ajnála tahsíl of the Amritsar District, and he had undoubtedly intended for a long time to give his land to the plaintiff, and he endeavoured to do so by executing a will in his favour. But before plaintiff could take actual possession after the donor's, or testator's death, the defendants, who were only remote relations through females, and who would clearly have failed if they had been compelled to sue the plaintiff, managed to slip in and secure possession for themselves. It is not surprising that the Court under these circumstances should have held that it was for the defendants to prove that the will was invalid by custom. The reasons given for holding this were briefly that in numerous cases which had come before the Chief Court the power of gift *inter vivos* or by will had been treated as one and the same, and by a judgment of the Privy Council wills were held valid under Hindu Law, although originally unknown to it. Another reason for applying, at any rate, the analogy of Hindu Law, was that the donor, or

No. 198 of 1889, considered.

testator, was a Khatri of a somewhat high caste. I venture to think that the above reasoning is hardly correct. In the first place, it cannot, I think, be said that the Chief Court has, at any rate in its decisions since 1887, treated the power of gift and the power of will as the same. No doubt in many cases in which gifts under a will have been in dispute, the power of gift has been considered generally. But the reason for this is plain. In the first place, it is often extremely difficult to say whether the deed itself is a gift or a will. In the second place, custom as to power of gift *inter vivos* can generally be ascertained without much difficulty, whereas in the case of wills it is usually found that there is, in one sense, no custom because they are unknown in practice, and the Court can only fall back on general principles. Obviously the best guide to the general principles to be applied is to be found in the custom which regulates the power of gift *inter vivos*. It is certain that in no case can a power of bequest exceed this power, but it by no means follows that the two are co-equal. The distinction between them is fully pointed out in *Punjab Record*, No. 69 of 1890, No. 33 of 1891, No. 34 of 1891, No. 81 of 1893 and No. 108 of 1893. The reason why their Lordships of the Privy Council "engrafted" wills on Hindu Law was that they found nothing in that law radically opposed to them. Possibly if it were found that by the custom of any tribe a delivery of possession was not essential to the validity of a gift *inter vivos*, it might be considered, in the absence of evidence on either side, that it was a fair presumption that it recognized wills also, but, as already stated, as long as possession is essential there can be no power of gift by will. These remarks apply only to wills affecting ancestral property. In the case of acquired property, the objectors have in the first instance to establish that they have any control over its disposition in any form, and gifts by will of acquired property have been upheld in the following cases: Nos. 170 of 1888, 176 of 1888 and 69 of 1890.

Distinction between the two powers fully recognized in later cases.

39. I have already observed that as regards acquired property in land the custom of the different tribes varies. Some tribes regard it as on the same footing as ancestral land, others regard it as at the absolute disposal of the acquirer. In some cases it is possible that there is no custom at all, and the answers may be pure conjectures, or expressions of individual opinion as to what should be the rule. But it is easy to see

Ancestral and acquired property.

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that there may be a distinct custom on this point, and that this custom may vary in different tribes and localities. Thus in the old settled, thickly populated districts to the east of the Sutlej, and also, though to a less extent, in the central districts, the acquisition of land by any exercise of individual energy, or by any other means than succession under the ordinary rules of inheritance, is necessarily very uncommon, and it would be very natural for tribal custom to refuse to admit any special rule for such exceptional cases, and to treat all land as the same. On the other hand, in the frontier districts, and in the old Ráwalpindi and Multan Divisions where waste land is plentiful, and is constantly being acquired by individuals by the expenditure of their own labour and capital, it would be only reasonable that the power of the proprietor to do what he likes with what is really his own should be fully recognized, and distinguished from his power over land which has come to him by inheritance. It is unnecessary to notice in detail any decisions of the Chief Court in cases relating to acquired land. It is sufficient to say that while the Court has been ready to presume that a proprietor's power over acquired property is unrestricted, it has also been perfectly ready to give full weight to any entry in the *Riwáj-i-ám* or other evidence to show that it is not. As to what constitutes "ancestral" property, the Full Bench ruling No. 32 of 1895 (Roe, Rivaz and Chatterji, JJ.), may be consulted. It is there pointed out that ancestral property includes all property which has come from an ancestor whether in the male or female line, and that the fact that the property has been diverted from the ordinary heirs to another line—such as a daughter and her issue—by an act of adoption or gift required or allowed by the Customary Law for the purpose of effecting this diversion, does not make the property thus diverted "acquired" property in the hands of its recipients. That such property on the dying out of the line in whose favour it was diverted, reverts to the original owner's family, has been established by the Full Bench decision No. 12 of 1892, which has been followed in all later cases.

Devolution of gifted property.

Locus standi.

40. I will conclude the review of the decisions relating to alienations of ancestral land with a brief reference to what is called the question of *locus standi*. Suits to contest alienations have occasionally been dismissed on the ground that the plaintiffs have failed to show that they had any *locus standi*. The expression is of course an inaccurate one in itself. Every

plaintiff whose plaint discloses a cause of action has necessarily a *locus standi*, and a plaint which alleges that the plaintiff has a reversionary interest in certain property, and that an act has been done which injuriously affects this interest, discloses a very good cause of action. But what the Courts have really meant is that the facts disclosed by the plaint, or the examination of the plaintiff, are such as to warrant a presumption against his power of objecting to the act complained of, and they have therefore called on him, before proceeding farther with the case, to prove the existence of his right to interfere, and on his failing to do this the suit has been dismissed on the ground that the plaintiff has no *locus standi*. That this view is erroneous has been pointed out in more than one decision of the Chief Court, and it is only necessary to quote No. 101 of 1893 (Plowden and Benton, JJ.), a case in which an alienation was contested by an agnate in the sixth degree. The head note, on this point, runs as follows :—

"There is no definite rule to be deduced from the reported cases that up to a determinate degree of propinquity it is to be presumed that kinsmen have a right to impeach alienations of ancestral land by a sonless man, and beyond that degree it is to be presumed that they have not.

"As a general rule, among the landowning tribes in the Punjab, the holder of ancestral land, whether or not he has male issue, has not a wholly unrestricted power to dispose of such land at pleasure and in the absence of necessity, and when any control over a landholder's power to alienate ancestral land exists, it resides in the person who would, in default of alienation, take the land as heir.

"When the competency of a sonless landholder to make a transfer of ancestral land is questioned by his reversionary heirs, the fact that they are reversionary heirs suffices to give them a *locus standi*. The exact degree of their propinquity or remoteness is, with other circumstances, a material element in determining whether the presumption against the competency of such a transfer has been rebutted, the force of the initial presumption varying according to all the known circumstances of the case."

The remarks in No. 50 of 1893 already quoted under the head of Adoption are very similar.

CHAP. III. *Pre-emption.*

Legal basis of pre-emption: The Punjab Laws Act.

41. The basis of the Law of Pre-emption as administered by the Courts is the Punjab Laws Act, (IV of 1872), which lays it down—

(1) that the custom of pre-emption is to be presumed to exist in all villages;

(2) that certain persons are entitled to exercise this right in different classes of cases;

(3) that special custom may be proved showing that the right may be otherwise enjoyed.

The provisions of the second of these clauses were no doubt intended to embody what was believed to be general custom, but they expressly recognize relationship as giving a right of pre-emption only in "villages held on ancestral shares." This expression was interpreted in No. 13 of 1893, *Punjab Record* (Benton and Rivaz, JJ.), to mean that the village must continue to be held on shares, that is, must not have been divided. But a later Full Bench Judgment No. 87 of 1894, *Punjab Record* (by the same Judges and Sir H. M. Plowden, S. J.), decided that such a village is not "held on shares," but is "joint undivided property." For a village to be held on shares there must have been a separation of shares, that is, there must have been at least a partition of the village into two or more main subdivisions, in accordance with shares, and for it to be "held on ancestral shares," this partition must have been in accordance with the rules of inheritance. When there has been this original partition, it is apparently immaterial what further partition has taken place within each subdivision. As to the term "subdivision of a village," it has been held that the term includes not merely the primary subdivisions known as *tarafs* and *pattís*, but also the further subdivisions within these known as "*thullás*" (Nos. 69 of 1893, Frizelle and Rivaz, JJ., 76 of 1894, Plowden and Roe, JJ.), and probably also "*dherís*" (No. 44 of 1892, Rivaz and Stogdon, JJ.). The meaning of the term "village" is discussed in No. 103 of 1889 (Powell and Frizelle, JJ.), and that of "landholder" or "landowner" in No. 153 of 1888 (Tremlett and Roe, JJ.). In No. 169 of 1889 (Benton and Rivaz, JJ.), it was held that it was sufficient for a "*taraf*" to be a recognized subdivision, even if it had been formed for revenue purposes only. In No. 29 of 1893 (Plowden and Frizelle, JJ.), it was pointed out that a permanent transfer of

Village held on ancestral shares.

"Subdivisions of a village."

"Village"

Landholder or landowner.

"Taraf."

"Sale."

land for a sum of money, *plus* something which is not money, does not cease to be a sale merely because of this addition.

Special custom.

Relationship.

Contiguity.

42. Claims to pre-emption on the ground of relationship or contiguity of land have been held not to be proved by special custom in Nos. 49 of 1889 (Roe and Frizelle, JJ.), 92 of 1892 (Stogdon and Bullock, JJ.), 44 of 1892 (Rivaz and Stogdon, JJ.), and 27 of 1893 (Frizelle and Rivaz, JJ.). It has often been held that pre-emption is a Village, and not a Tribal, Custom, and that consequently the *Riwáj-i-áms* are inadmissible, or valueless as evidence. Doubts have also been thrown on the admissibility or value of entries in the *Wájib-ul-arz*; but the last point was settled in their favour by the Full Bench ruling No. 98 of 1894 (Plowden, Benton and Rivaz, JJ.). The true nature of the right of pre-emption in village communities has never yet been specially considered by the Chief Court; when it is so considered, more weight will, I venture to think, be given both to the general principles of the Customary Law and to entries as to custom in the *Riwáj-i-áms*. The meaning of the term "*sharkáyán shikami wa jaddi*," which often occurs in the *Wájib-ul-arz* to designate the group of persons first entitled to pre-emption, has often been considered by the Court, and the latest interpretation (in No. 87 of 1895, Roe and Rivaz, JJ., followed in a later case, not yet published, by Roe and Chatterji, JJ.), is that it includes all the agnates descended from a common ancestor of whose estate the land sold once formed part, and that whether this estate has been divided, or has continued joint, is immaterial. In No. 121 of 1888 (Rattigan and Roe, JJ.), it was pointed out that the fact that the *Wájib-ul-arz* only expressly mentioned certain persons as having special rights of pre-emption did not deprive other persons of any rights to which they might be entitled by the Punjab Laws Act itself. In No. 179 of 1888 (Roe and Frizelle, JJ.), it was held that the right of pre-emption could not be claimed with reference to a non-transferable right of occupancy, but (No. 43 of 1892, Rivaz and Stogdon, JJ.) it can be claimed when this right is transferable, and it extends to transactions in which a proprietor creates a right of occupancy for a consideration. As to claims by non-proprietors to pre-emption in cases of sale in houses in the *ábádi*, it was held (in No. 85 of 1893, Note, Plowden, S. J.), that a custom had been proved in their favour, and in another case (No. 85 of 1893, Plowden and Benton, JJ.), that it had not.

Entries in the *Wájib-ul-arz* or *Riwáj-i-áms*.

"Sharkáyán shikami."

Sales of occupancy rights.

Houses in *ábádi*.

CHAP. III.

Other points. Joint suits.

43. In No. 83 of 1893 (Plowden and Roe, JJ.), it was held that when a person entitled to pre-emption joins with himself as co-plaintiff in a suit a person not so entitled, he does not thereby forfeit his right, and his suit should not be dismissed; the name of the person not entitled should merely be struck out of the plaint. On the other hand, in No. 29 of 1894, Rivaz, J. held that when two persons equally, but not jointly, entitled to pre-emption join in one suit, the plaint is bad for misjoinder, but if one of the plaintiffs withdraws the suit may proceed. In No. 102 of 1894 (Benton and Stogdon, JJ.), it was held that when several persons equally entitled to pre-emption institute almost simultaneously separate suits, that is, when all the suits are instituted before a decree has been passed in any one suit, the plaintiff, in whose favour the first decree may be given is not entitled to take the whole property; all the plaintiffs must share it equally. In No. 102 of 1888 (Tremlett and Rattigan, JJ.), it was held that when a pre-emptor had come forward to assert his right, the vendor and vendee could not defeat his right by cancelling the sale or mortgage. The rulings that persons equally entitled to sue cannot sue jointly, and that a sale or mortgage cannot be cancelled, appear to me hardly in accordance with the true principles of custom. On the other hand, it is quite in accordance with these principles that, as ruled in No. 87 of 1895, when the property sold consists of separate parts, in only one, or some, of which the plaintiff has a right of pre-emption, he cannot be compelled, or claim, to take over the whole bargain, but is entitled to a decree for the part, or parts, only in which his right has been proved.

Power of withdrawal.

APPENDIX.

Abstract of unpublished Riwáj-i-ams.

DELHI.

Succession of daughters.

All the tribes say that daughters and their sons can never take as heirs; they are excluded by all agnates of any degree; residence in her father's house confers no rights on a daughter or her husband; she is entitled to maintenance only, till marriage, or on widowhood if her husband's family cannot maintain her. Delhi.

Adoption.

All the tribes say that a widow may adopt if she has received the express authority of her husband, in which case the consent of the agnates is not required; otherwise it is. If the adopted son die, the Goras (Hindu and Muhammadan) say that the widow may make a second adoption. But all the other tribes say she cannot do so without the consent of the agnates.

In all adoptions it is essential that there should be a public act of adoption in the presence of the brotherhood. The age of the person adopted is immaterial. As to the limits of selection the person adopted must be, according to the Gujars (Hindu and Muhammadan), the Goras (Hindu and Muhammadan), the Ahírs, Sánís and Málís, a *yak jaddi*, or failing *yak jaddís*, one of the same *gôt*.

The Jats (Hindu and Muhammadan) say that there is no precise rule as to the number of generations which restrict the selection to *yak jaddís*, but the general practice is that if there are no *yak jaddís* within two or three generations, a daughters or a sister's son may be adopted; four instances (two each) are given of such adoptions. The Taggas (Hindu and Muhammadan) say that first a *yak jaddi or* a daughter's son must be selected; failing these, any one within the *gôt* can be adopted; four instances, as among the Jats, are given.

Delhi.

The answer of the Riyas is the same as the Gujars. One instance is given of an adoption of a daughter's son, but it is expressly said that this is not to be taken as a precedent.

The Meos say a man may adopt whom he pleases. The Shekhs say that if there are no *yak jaddís* a daughter's or a sister's son may be adopted. One instance is given.

The Gujars add, in answer to another question, that, amongst *yak jaddís*, preference should be given to a brother's son or grandson. So do all the tribes, except the Meos.

Gifts.

The agricultural Brahmins of Ballabgarh say that a father may make an unequal distribution of ancestrall and among his sons, but all the others deny this, and all say that he cannot disinherit a son.

The questions regarding gifts are by no means clearly framed or arranged, but the substance of the answers appears to be this:

There is no restriction in any tribe to the power of dealing with moveable property: as regards immoveable, some tribes allow a proprietor to deal with *acquired* property as he likes, whilst others make no distinction between acquired and ancestral land.

As regards the latter, the only gifts allowed are—

(1). A gift of a small plot (2 or 3 *bigahs khám*) in *pun*, *i.e.*, for a religious or charitable purpose. This is generally allowed.

(2). Apparently, but the (answer 218) is by no means clear, the Gujars (Hindu and Muhammadan), Ahírs, Sánís, Riyás and Málís, and these alone, allow a sonless man to gift his estate to one of his *wárisán* on condition of his looking after him.

(3). So too (answer 127) the Riyás appear to allow a gift to a daughter's son in default of male heirs—

Delivery of possession is essential to all gifts.

Wills.

The Chauháns say that wills are sometimes written. All the other tribes say that no will has ever yet been written.

ROHTAK.

Succession.

Daughters can never succeed as heirs, nor can gifts be made to them without the consent of the agnates. In the Jhajjar tahsíl unmarried daughters are said to be entitled, in the absence of sons, to hold the estate till marriage, but in the other tahsíls they are declared entitled to maintenance only, a right which in Jhajjar is extended to widowed daughters and sisters whose husband's agnates cannot maintain them. Rohtak.

The Patháns of Jhajjar form an exception to the general rule, and say that daughters succeed in default of sons, to the exclusion of brothers, but the other Patháns follow the general custom of the district.

The custom of taking a son-in-law to reside in the house is not general, and in no case does such residence give any special rights.

Adoption.

Neither the Afgháns nor the Ahírs nor the Rájpúts of Sámpla and Gohána appear to recognize adoption. The Afgháns of Jhajjar say they do, but as they add that an adopted son can be excluded from succession if his adoptive father is displeased with him for any cause, it is clear that there is no custom.

In the *Rohtak* and *Jhajjar* tahsíls it is said that a widow can adopt without special permission from her husband, or the consent of the agnates, but of course she can only adopt a near agnate of her husband. In the other two tahsíls she cannot adopt at all without the above permission or consent.

The adoption must take place before the brotherhood. It is said that the person adopted should be from 5 to 17 years old, but it is nearly always added that this is not really necessary.

The general rule is that the person adopted must be a near agnate, one of the *wárisán yak jaddi*. But the Jats and Rájpúts of Jhajjar, and the Brahmins of Rohtak and Jhajjar, say that, if there are no such agnates, a daughter's or sister's son may be adopted. The Jats and Brahmins of Sámpla and Gohána merely say that *yak jaddís and* daughter's or sister's sons may be adopted.

Gifts.

Rohtak. The Afgháns of the Gohána tahsíl say that if there are no sons a man may give all his property to any relation, either on the male or female side, or in charity; if there are sons he can still give a daughter her share by Muhammadan Law.

All the other tribes allow a small gift, from two to five *biguhs*, for a charitable or religious purpose. In their first answers they seemed also to allow such small gifts to daughter's and sister's sons, but later, when questioned distinctly as to gifts to daughters, they said that they could only be made with the consent of the heirs.

Gifts to strangers are never allowed by any tribe.

Most of the tribes say distinctly that wills are not recognized by custom, and those who profess to recognize them clearly do not know what they are talking about. Thus the Jats of Jhajjar merely give a colourless answer as to how a will is made, and say nothing as to what property can be dealt with by it. Another tribe, after describing a will and asserting its validity, adds that it will not be valid unless made with the assent of the *wárisán jaddi*. The Afgháns of Gohána obviously think that a will means a gift made in the presence of the brotherhood.

In their answers on pre-emption, all the tribes say that this is the only right of the heirs in cases of sale and mortgage. It seems plain to me that they do not mean to assert that a man has an unrestricted power of alienation by sale or mortgage. Such an assertion would be quite inconsistent with their answers as to adoption and gifts. They probably never contemplated a man selling or mortgaging his land except for necessity, and mean that in such a case the assent of the heirs is not necessary, but they have a right of pre-emption.

JULLUNDUR.

Jullundur. There is a separate *Riwáj-i-ám* for each tahsíl, but all the answers will be grouped according to subjects.

Succession of daughters.

In the *Jullundur* tahsíl the Mahtans say that a daughter is excluded by any agnate, however distant.

All the other tribes, except the Aráins, speak of her as excluded by "near agnates." The Aráins say that she succeeds

without any written deed of gift, if there are no agnates within five generations, and that she may succeed, under a written gift, in the absence of male issue. Jullundur.

No tribe admits that residence as a *gharjawái* confers any rights of succession, but the Mahtans and "other Muhammadans" say that in such a case he may succeed under a special gift from his father-in-law if there are no sons.

In the *Nawashahr* tahsíl all the tribes say that under no circumstances can a daughter or her husband succeed.

In *Nakodar* all the tribes say the same, but their answer indicates that a father may make a gift to his daughter during his lifetime.

In *Phillour* all the tribes say that agnates of any degree exclude daughters, and that a son-in-law who abandons his own family, and takes up a permanent residence with his father-in-law, does not thereby lose his rights in his own family, or acquire any in his wife's family.

Adoption.

In the *Jullundur* tahsíl the Muhammadan Rájpúts do not recognize adoption at all.

Amongst the tribes which recognize it, the essential act in an adoption is that it must be definite and public, either by a written deed, or a feast to the brotherhood.

As to who may be adopted:

All the Jats, both Hindu and Muhammadan, and all other Hindu tribes, say that he must be one of the near agnates (*karíbi yak jaddís*), or at any rate of the same caste (*zát*). The Mahtans say that (1) daughter's sons and (2) sister's sons have the first right, but the only rule is that the son adopted must be of the same tribe (*kaum*), though he need not be of the same *gôt*.

The Awáns and other Muhammadans say that a preference should be given to an own brother's son or grandson rather than to a daughter's or sister's son, but a man may adopt whom he pleases, so long as he is of the same *kaum*.

The Mahtans deny any power of adoption to the widow; the other tribes allow her to adopt with the permission of her husband or the consent of the agnates. The Hindu Jats and other Hindús say this permission or consent must be in writing, but the others do not require this.

Jullundur.

In *Nawashahr* all the tribes who recognize adoption say that the act of adoption must be performed publicly in the presence of the brotherhood; that the person adopted must be of the same *gôt* as the adoptor; and that a widow can only adopt with the *written* permission of her husband, or with the consent of the agnates.

In *Nakodar*, among all tribes, the adoption must be a public act, and the adopted son must be taken from the nearest group of agnates, beginning with brother's sons: no group can be passed over without its consent.

A widow may adopt with the permission of her husband, or the consent of the agnates, verbal or written.

In *Phillour* all the tribes give the same answers.

They say that all the ceremonies prescribed by the Dharmshástras are practised at adoption, but what they really insist on is a public act in the presence of the brotherhood; and they add that in the present day a written deed is considered necessary.

The person adopted should be taken from the *yak jaddís*, in order of relationship. If there is no suitable (*láik*) *yak jaddi* any one of the same *gôt* may be adopted; and, failing such a person, one of another *gôt*. But it is added no one of another *gôt* has ever yet been adopted.

A widow can only adopt with the written permission of her husband, or with the consent of the agnates, which is always necessary for a second adoption.

Gifts and Wills.

In the *Jullundur* tahsíl all the Hindu tribes say that gifts can only be made to those who would naturally take as heirs. The Muhammadans (including Jats) say that where there are no sons a man may make a gift to his widow, or his relatives (*rishtadárán*).

All the tribes allow a moderate gift for a charitable or religious purpose (*khairát* or *pun*), but they do not allow land, whether ancestral or acquired, to be given to a daughter in dower (and they say that there are no instances of any other gifts to daughters) or to a stranger.

The Awáns say that a sonless man may bequeath to those to whom he might have made a gift (*i.e.*, his wife and *rishtadárán*), but all the other tribes say distinctly that there is no power of bequest.

In *Nawashahr* the only gifts allowed are moderate gifts in *khairát* or *pun*, but it is said that a father may, with the consent of his sons, give land to his daughter in dower. Jullundur.

All the tribes distinctly deny any power of gift by will.

In *Nakodar* and in *Phillour* the answers of all the tribes, both as to gifts and wills, are the same as in Nawashahr.

HOSHIARPUR.

For the Una tahsíl a separate *Riwáj-i-ám* was prepared in 1872 for each of the twenty-one talúqás, or local subdivisions. For the rest of the district a single record was prepared in 1884. Hoshiárpur.

The answers for the whole district under each sub-head are as follows:—

Succession of daughters.

The general rule throughout the district is that a daughter can never succeed as an heir. The only exceptions to this rule are the following: The Sayads say that she succeeds in default of brother's sons.

She is said to succeed, in default of descendants of the great-grandfather, or agnates in the fourth degree, by the Gujars of the Hoshiárpur tahsíl, the Aráins, Shekhs, Sainís (in some villages she is said to succeed after agnates in the second degree), the Rájpúts (both Hindu and Muhammadan) and the Afgháns. The Dogars, Aráins, Chángs, Báhtís and Khatrís say that agnates of the fourth degree exclude the daughter, but do not expressly say that she succeeds after them. The Kaláls say that she succeeds after agnates of the fifth degree. The Dogars and Khatrís also say expressly that she does succeed if there are no agnates (*jaddís*) at all.

An unmarried daughter, in the absence of sons, is generally allowed, in the Una tahsíl, to hold her father's estate, on a widow's tenure, till marriage. But she is expressly stated to be entitled to maintenance only by the tribes of the Dadiál and Chatrál talúqás and by the Rájpúts of Kandhi.

The only tribes who acknowledge any rights in a *khánah-damád* are the Jats of Garhshankar, who say that he succeeds in default of sons, and the Sainís, who say that he may receive a small gift.

Adoption.

Hoshiárpur. Many tribes are recorded as stating, in answer to the different questions under the head of Adoption, that "there is no custom," but in many of the talúqás of the Una tahsíl the Rájpúts, and some Muhammadan Gujars, distinctly say that they do not recognize adoption at all, and so, in the other tahsíls, do the Gujars (of Hoshiárpur), the Dogars, Mahtans, Shekhs, Sayads and Afgháns.

It is essential that the act of adoption should be a public one. Usually it takes place before the assembled brotherhood, but many tribes allow that a written deed is sufficient, if the fact of its execution is duly made known. But the Brahmins and Kaláls say that the adoption *must* be in the presence of the brotherhood. One or two tribes mention a limit of age, such as 12 or 15 years, or "whilst a child," but this is clearly not essential.

As to the person who may be adopted, the general answer is that he must be a *yak jaddi*, and "the nearer the better."

The adoption of a daughter's or sister's son is only recognized as valid (1) in default of *yak jaddís* by the adopting tribes of the Una and Lohárú talúqás of the Una tahsíl, by the Rájpúts of Dasúya, and the Brahmins of the three Plain tahsíls, and (2) as apparently equally valid with the adoption of an agnate, by the Gujars of Dasúya, the Aráins, Sainís, the Rájpúts (of Garhshankar and Hoshiárpur), the Khatrís and the Jats. But after the publication of *Punjab Record* No. 84 of 1895, discrediting the entry on this point regarding the custom of the Hindu Jats of the Hoshiárpur tahsíl, all the entries which assert the validity of the adoption of a daughter's son must be received with much caution.

The only tribe which allows the adoption of a *ghair gôt*, other than a daughter's or sister's son, is that of the Kaláls, and they too say that the person adopted must be of the same *kaum*.

The general answer is that a widow cannot adopt, even under authority from her husband. Presumably she can do so with the consent of the agnates, but the Awáns refuse to allow even this, on the ground that women are so prone to trickery. She may adopt under authority from her husband according to the Brahmins and other tribes of the Bet Manuswál talúqa, and the Khatrís of the Una talúqá of the Una tahsíl, the

Gujars of Dasúya, the Jats of Hoshiárpur and Garhshankar, and the Aráins and Kaláls of the three Plain tahsíls. The Sainís say she may adopt with the *written* permission of her husband. Hoshiárpur.

Gifts and Wills.

The general custom is that a man cannot distribute his land, whether ancestral or acquired, unequally amongst his sons, or give it to a stranger. Gifts are only allowed in the following cases :—

The tribes of the Dangoh, Panjal, Dharúi and Amb talúqás of Una say that a father may disinherit his son, wholly or partially, for *bud chalani*. Gifts for charitable or religious purposes (*pun, sankalap, khairát*) are allowed by the Gujars of Garhshankar (up to 10 per cent. of the estate), the Chángs and Bahtís (up to 5 per cent.), the Brahmins (the same), the Rájpúts (from 2 to 4 per cent.), the Mahtans (of 1 or 2 *kanáls*), the Kaláls (according to *taufik*), and by the Jats of Hoshiárpur (of *thora raqba*). The Una answers also often indicate a power of gift in *pun* without distinctly specifying it. Gifts of a small piece of land (*kisi kadar*) to a daughter on her marriage are recognised in most of the Una talúqás and in the Plain tahsíls by the Dogars and Awáns (up to one-fifth of *any* land), by the Shekhs, Sayads and Afgháns (of acquired land only), by the Brahmins (up to one-twentieth), and by the Jats of Dasúya (without limit).

Other gifts to daughters, or their sons or husbands, are admitted only by the Dogars (who add, however, that this is not the custom), by the Khatrís (of acquired land only), by the Jats of Garhshankar (when there are no sons), and by the Muhammadan Jats of Hoshiárpur (whether there are sons or not). In Una it is said generally that gifts may be made to daughters, (1) if there are no sons, by most of the tribes of the Talhatti, Dangoh and Punjal talúqás; (2) if there are no agnates within three degrees, by most of the tribes of the Dharúi and Amb talúqás.

The only tribe which professes to recognize wills is that of the Shekhs, who can give no instances in support of their answer.

KANGRA.

Succession of daughters.

Kángra. The right of daughters to succeed as heirs is nowhere recognized under any circumstances.

Adoption.

Adoption appears to be universally recognized except by the priestly family of Bhojkís in the Hamírpur tahsíl. The only essential ceremony is the performance of the act in the presence of the brotherhood.

The general rule is that the adopted son must be one of the *jaddís*, or, failing these, one of the same *kaum*. Among the Gujars of Núrpur, and in Kulu and Plách generally, it is only necessary that he should be of the same *kaum*.

A widow is generally only allowed to adopt with the consent of the agnates, but in the Dera tahsíl it is said that she can do so if she has received the permission of her husband.

Gifts and Wills.

The Gosháins and all classes of Dágís deny any power of gift, but the general rule is that gifts can be made to daughters if there are no agnates "as far as the *pind* of the Sháshtras reaches," *i.e.*, descendants of the great-grandfather (*pardádá*). But the Girths, Jiwars, Jats, and miscellaneous tribes of the Dera tahsíl place the limit at the grandfather (*dádá*). In Kulu and Plách it is said that a gift may be made to a daughter in the absence of male lineal descendants.

Wills are nowhere recognized.

SIALKOT—RÁYÁ TAHSIL.

Siálkot—Ráyá tahsíl. I give a separate abstract of the *Riwáj-i-ám* of the Ráyá tahsíl of the Siálkot District, not because its customs present any special features, but because the tahsíl has, so to speak, "fallen to the ground between two stools." When its *Riwáj-i-ám* was prepared it formed part of the Amritsar District, and so was not included in Amin Chand's book on the Siálkot Customs. But a few years after the close of the settlement it was transferred to Siálkot, and it has thus been omitted from the English volume prepared by Mr. J. A. Grant for the

Amritsar District when he revised its settlement. The answers of each tribe have been recorded separately under the different questions; often the answer was recorded as that of the tribe for the whole district, with a note of any local difference that might be stated to exist. But the answers are practically the same for all the tribes throughout the district, and there is certainly no difference of any importance. My notes under each subject will therefore be very brief. Siálkot—Ráyá tahsíl.

Rights of daughters.

Daughters, or their sons, or husbands, can never take as heirs, nor can gifts be made to them, whether in dower or otherwise, except with the consent of the agnates. Some of the answers undoubtedly say that where a sonless man has taken his daughter and son-in-law to live with him, and executed a written deed of gift in their favour in the presence of the brotherhood, and has given them joint possession with himself, they will succeed. It is not clear whether this means merely, as was expressly stated in the answers to the general question regarding gifts to daughters, that where these have become accomplished facts they will not be disturbed, but that they must not be made in future, or whether it means to make an exception in favour of a resident son-in-law. The latter meaning would be inconsistent with the answer, which emphatically declares that daughters' and sisters' sons and husbands cannot be adopted because they are strangers (*ghair*). It is to be noted also that in many of the answers treating these gifts as special cases, the consent of the agnates is inserted as a condition to their validity.

Adoption.

Not only is adoption restricted to agnates, but it is everywhere distinctly stated that strict regard must be paid to degrees of relationship, and that a nearer suitable agnate must be adopted in preference to one more remote. It is said that he should not be more than 10 years of age, but the only thing essential, besides agnate relationship, is that the adoption should take place before the assembled brotherhood.

As to the power of a widow to adopt the answers vary, but seeing how jealously adoption even by a male is restricted,

Siálkot—Ráyá tahsíl. it is not of any great importance whether the widow also is allowed to exercise the power or not.

Gifts.

A father cannot disinherit a son, or make an unequal distribution of his property. But he may pass over a son for *bud chalani* (misconduct), and give his share to his son or wife. If such a son has no sons or wife, he cannot be touched.

The only gifts allowed are small gifts for a charitable or religious purpose, the limit being fixed at one-tenth of the estate, and even for these some tribes require the assent of the agnates, whether the land is ancestral or acquired.

It is expressly stated that there is no power of gift by will.

Wherever the power of mortgage and sale is referred to, "necessity" is given as the only case in which it can be exercised.

GUJRANWALA.

Succession of daughters.

Gujránwála. In the *Gujránwála* tahsíl all the tribes say that daughters or sisters, or their sons, can never take as heirs.

In the *Wazírabad* tahsíl the general answer is that daughters or sisters, or their sons, cannot inherit if there are agnates within four generations, but some say eleven generations.

The permanent residence of the daughter and her husband with her father gives no right of succession, except when the father, in the absence of sons, has executed a written deed of gift or will in their favour. Some tribes do not allow even this.

In the *Háfizabad* tahsíl the Khokars profess to follow Muhammadan Law. All the other tribes say that daughters cannot inherit as long as there are agnates of any degree (but they would inherit if there were an absolute afailure of agnates), and that permanent residence in the father's house confers no rights at all.

Adoption.

In the *Gujránwála* tahsíl all the tribes say that the adoption must take place before the assembled brotherhood, and

that the person adopted must be of the same *gôt* as the adoptor, and one of his near agnates, a preference being given to a brother's son. Gujránwála.

A widow can only adopt with the written permission of her husband, or the consent of the agnates.

In the *Wazírabad* tahsíl the answer of all the tribes is the same on all points. There must be a public adoption before the brotherhood, and for a *tabinat* as distinguished from *god-lena* (and this is the only distinction between the two) the boy must not be more than five years of age.

He must also be (1) a brother's son, or (2) a near agnate, or (3) a daughter's son. He must, except in the last case, be of the same *gôt*.

A widow may adopt with the written or verbal (if thoroughly well proved) permission of her husband.

In the *Háfizabad* tahsíl the only tribes who recognize adoption at all are the Arorás, Khatrís and Banánás, and some Hindu Jats. The latter follow the same custom as the Hindu Jats of Gujránwála. The former say that the person adopted must be of the same *gôt* as the adoptor and a near agnate, a preference being given to a brother's son. They do not apparently allow the adoption of a daughter's son.

A widow may adopt only with the permission of her husband, or the consent of the agnates.

Gifts and Wills.

All the tribes say that no gift of ancestral land can be made without the consent of the heirs.

As to acquired land, the first answer is that the owner can do what he likes with it, but the answer as to gifts to daughters is that, whether in dower or otherwise, only moveable property can be given.

All say distinctly that there is no power of gift by will.

In the *Wazírabad* tahsíl all the answers are the same as in Gujránwála, and there is the same inconsistency about acquired immoveable property. The only difference in the answers is that whilst in both tahsíls it is said that a gift must be in writing, in Wazírabad delivery of possession is said to be necessary, and in Gujránwála not.

Gujránwála. In *Háfizabad*, all the answers are the same as in Gujránwála. In all three tahsíls the power of gift of moveable property, ancestral or acquired, is unrestricted.

JHANG.

Succession of daughters.

Jhang. All the Muhammadan tribes say that if a daughter is married to a near agnate she succeeds in default of sons, otherwise the agnates succeed.

If a daughter and her husband reside permanently with her father, they can only succeed if the father has placed them in possession during his lifetime. And if the daughter die before her father, her husband has no right of succession.

The Brahmins and other Hindús say that all agnates exclude daughters, and they do not recognize a resident son-in-law.

Adoption.

All the tribes, including even the Brahmins, profess to concur in the answer of the Sayads, which is, that a woman can never adopt, but that a man may adopt any agnate, or a daughter's or a sister's son, or any one who is not a *ghair kaum*, and that the person adopted must be under five years of age.

Only four instances of alleged adoptions, *viz.*, one among Siáls, one among Khatrís, and two among Arorás, are given for the whole district, and the Settlement Officer (Mr. Steedman) has very naturally recorded in the *Riwáj-i-ám* as his own opinion:

"I have great doubts about these entries relating to adoption. A few instances there will be which seem to prove such a custom, but I feel quite sure that the custom is anything but common, and that an adopted son should succeed to an inheritance and exclude near relations is repugnant to the general feelings of the district: all these entries should be cautiously acted on."

Gifts and Wills.

All the tribes follow the Sayads in asserting an unrestricted power of gift of all kinds of property, including ancestral

land, to any one except a *ghair kaum*. But very few instances are given. Jhang.

All tribes agree that wills are unknown to custom, but they add that in future if any are made they will be governed, amongst Muhammadans by the "Shara," and amongst Hindús by the "Dharmshástra."

Pre-emption.

All say that the right of pre-emption belongs in turn (1) to the *yak jaddís*; (2) to co-sharers in the property sold; (3) to proprietors of adjoining lands; (4) to the proprietors (*a*) of the *taraf*, (*b*) of the village; (5) to occupancy tenants.

MONTGOMERY.

The remarks of Mr. Purser, the Settlement Officer, as to the value of the answers of the *Riwáj-i-ám* on many points have been given in Chapter II. They are fully borne out by the examination of the *Riwáj-i-ám* itself. It is clear that the questions were, either from want of proper explanation on the part of the Settlement Superintendent, or from want of intelligence on the part of the people, not always fully understood, and that answers were often given at random. Thus some tribes who stated before the Superintendents that a particular generation was the limit at which agnates ceased to exclude daughters, stated when the answers were attested before the Settlement Officer that there was no limit. Most of the answers regarding adoption commence by setting forth at great length the conditions under which the power may be exercised, and end with the remark that up to the present time there has never been an adoption in the tribe. Under these circumstances it would be a waste of time to attempt any very elaborate analysis of the answers. The manner in which the *Riwáj-i-ám* has been prepared, by recording at length a separate answer for each tribe in each tahsíl, without any attempt at grouping, would make the task an unusually difficult one. I shall, therefore, content myself with giving the substance of the answers for the district as a whole, leaving it to any one who requires more detailed information to refer to the answer of the particular tribe whose custom may be in dispute, and again warning him that wherever the answer asserts a Montgomery.

Montgomery. custom opposed to generally accepted principles it should be received with great caution, and well authenticated precedents should be required in support of it.

Succession of daughters.

There is a general agreement that unmarried daughters are entitled, in the absence of sons, to hold their father's estate till marriage.

Married daughters are excluded by "near" agnates. Some tribes fix the great-grandfather as the limit of the ancestor whose male issue exclude daughters. Other tribes say distinctly that there is no limit, and that any agnate excludes.

The existence of a *khánadamád* appears to be not uncommon, but it is universally admitted that he can only succeed under a special gift, or open installation as heir. And it seems doubtful, in some of the tribes, if he can do even this, unless he is also an agnate.

Adoption.

Is clearly unknown as a general practice.

Gifts and Wills.

The general effect of the answers would appear to be this:

There is no distinction between ancestral and acquired and.

Gifts cannot be made to daughters or their sons or husbands without the consent of sons; but some tribes allow "some portion" to be given them without such consent.

It is not generally stated distinctly that if there are no sons gifts may be made to daughters, but most of the answers would seem to imply this.

They also imply that no gift can be made to a stranger (*ghair kaum*) without the consent of the heirs, and that a gift of land even in *khairát*, in the presence of sons, requires their consent.

Some tribes allow a father to distribute his estate unequally amongst his sons, givin gone a larger share than another, but they do not allow him to totally disinherit any son.

Wills are quite unknown.

MUZAFFARGARH.

A separate record of the answers to the same series of questions has been prepared for each tahsíl. Muzaffargarh.

Succession of Daughters.

In the *Muzaffargarh* tahsíl the Muhammadan Jats, the Bilúchís, and "Miscellaneous Tribes" say that daughters succeed in the absence of male issue.

The Sayads say that she only succeeds in such a case if she has been married within her own *khándán*.

The Hindús, Koreshís and Patháns say that she only succeeds if there are no *karábatís*.

A sister ranks with, but after, a daughter. A *khánadámád*, as such, has no rights, but the answers indicate that he may receive a gift.

In the *Sanáwán* tahsíl the answer of the Muhammadan Jats, the Bilúchís and "Miscellaneous Tribes" is the same as in Muzaffargarh, and the Sayads are recorded as concurring with them.

The Patháns say that the case has never occurred.

The Hindús and Koreshís say that a daughter only succeeds if there are no *karábatís*.

The answers as to the *khánadamád* and sister are the same as in Muzaffargarh for all tribes.

In the *Alipur* tahsíl all the tribes agree that daughters, except under a gift from the father during his lifetime, only succeed in the absence of *karábatís*. The *khánadamád*, as such, has no rights.

Adoption :

Is not recognized by any of the tribes of the Muzaffargarh tahsíl or in the Sanáwán tahsíl except by the Hindús, who say that the person adopted must be under 15 years of age, that he is adopted at a feast, and passes into his new family. They say that a widow can adopt, but they say nothing as to the limits of selection. In Alipur none of the tribes, not even the Hindús, recognize adoption. The Hindús say that *gaddinishíns* may adopt whom they please, but no case of their doing so has yet occurred.

Gifts.

Muzaffargarh. In the *Muzaffargarh* tahsíl all the tribes concur in the answer of the Jats that, although no gifts have in fact ever been made, a man has an unrestricted power to gift all kinds of property to any one he pleases as long as he does not injure or offend his sons.

In *Sanáwán* an absolutely unrestricted power of gift is asserted, and instances are given of its exercise.

In *Alipur* the same.

Pre-emption.

In all three tahsíls relationship is recognized as giving the first right of pre-emption, and after it, vicinage.

SHAHPUR.

Shahpur. A single record has been, or rather is being, prepared for the whole district. The answers have not yet been finally attested, but at present they stand as follows :—

Succession of daughters.

The general answer is that unmarried daughters, in the absence of sons, hold, on a widow's tenure, till marriage—married daughters never take as heirs—but the answers generally indicate that they may take under a special gift.

Amongst the Hindús, the Khukrán Khatrís of Bhera say that a married daughter is excluded by the descendants of a grandfather (*dáda*) but excludes those of a great-grandfather (*per-dáda*). Some Bhera Khatrís say that she excludes even an uncle and his sons. On the other hand, the Multánís and Arorás say that she has no rights at all.

The answer of the general body of Muhammadan tribes is that the resident son-in-law is not recognized. All the tribes who do recognize him say that neither he nor his sons acquire any right of inheritance ; they can only take under a special gift to themselves or to the daughter.

A sister is merely a more remote daughter.

Adoption.

The Muhammadans generally do not recognize adoption. The Awáns, Khokars, Gondals and Ránjhás profess to recognize

it, and they say that the adoption must be in writing, otherwise it will not be valid, and that if the adopted son fail to render service to the adoptor, or if the adoptor become displeased with him, the adoption can be cancelled. A man may adopt one of his own *khándán*, or *rishtadárs*, or, if this cannot be arranged, one of his own *kaum*. No instances are given in support of any of the answers. It would seem doubtful if any Muhammadan tribe really recognizes adoption. Shahpur.

Amongst the Hindús, there must be the usual adoption in the presence of the brotherhood and the person adopted must be a *rishtadár*, in which term daughters' and sisters' sons are included, and a more remote cannot be adopted in preference to a nearer relative.

A widow can only adopt with the written permission of her husband or of the agnates.

Gifts and Wills.

Actual delivery of possession, or mutation of names, is necessary to the validity of a gift, even in the case of gifts to minors, except amongst the Hindús, who say that in this case it is unnecessary. All agree that in the case of a gift by a husband to a wife, a declaration in the presence of trustworthy witnesses is sufficient.

Immoveable property cannot be given in charity (*khairát*), except according to the Hindús who allow a reasonable gift (*wájabi hissa*) according to the donor's circumstances (*haisiyat*).

It is not the practice to give land in dower, and if the agnates object only a moderate gift can be made. Some tribes put the limit at the daughter's share by Muhammadan Law.

As to other gifts no distinction is made between ancestral and acquired immoveable property. The Awáns say that if there are sons or sons' sons, immoveable property cannot be gifted without their consent, but in default of them it may be gifted to any heir (*wáris*) or to daughters or sisters, or their sons, or to a son-in-law. An unequal distribution amongst sons cannot be made.

The Gondals, Ránjhás and Khokars say that such gifts cannot be made without the consent of near agnates (*wárisán nazdiki*).

Shahpur.

Other Muhammadans say that gifts cannot be made to daughter's or sister's sons, or a son-in-law without the consent of the heirs, but they may be made, without consent, to daughters or sisters up to their shares by Muhammadan Law, even when there are sons or grandsons. And a father may give a son something more than his share, but cannot entirely disinherit him.

The Hindús answer generally as the Awáns, but say that a father may give a son something more than his share, but cannot entirely disinherit him. If there are no sons, the rule for gifts is the same as for adoption.

The Khokars do not recognize wills. The others, both Muhammadans and Hindús, profess to recognize them, but say that the custom is not general.

A number of individuals have recorded their own ideas on the subject. A case is cited in which the Chief Court, by a decision, dated 16th January 1891, set aside a will in favour of a sister's son with regard to immoveable property, but upheld it with regard to moveable property.

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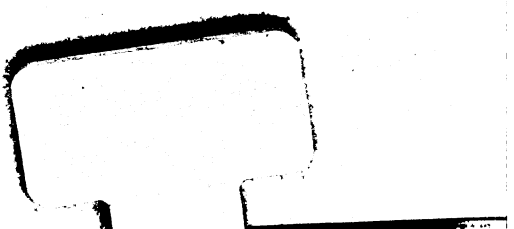
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